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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 724

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL., APPELLANTS,

vs.

SOUTHERN COAL & COKE COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

FILED FEBRUARY 8, 1937.

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INDEX.

	Original	Print
Record from D. C. U. S., Middle District of Alabama	1	1
Amended bill of complaint	1	1
Exhibit "A"—Act to create a system of unemployment compensation, etc.	36	27
Exhibit "B"—Amendment to Act	37	46
Exhibit "C"—Amendment to Act	38	54
Exhibit "D"—Amendment to Act	38-4	57
Exhibit "E"—Information and instructions to employers—No. 1	39	59
Exhibit "E-1"—Supplement No. 1 to information and instructions No. 1	40	68
Exhibit "E-2"—Rules and regulations	41	70
Exhibit "E-3"—Unemployment compensation law as amended	42	105
Exhibit "E-4"—Text of provisions of Federal Social Security Act relating to compensation under state laws	43-1	128
Exhibit "E-5"—Contribution instructions	44-1	141
Exhibit "E-6"—Employer's status report	45	146

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 11, 1937.

Record from D. C. U. S., Middle District of Alabama—Continued.

	Original	Print
Amended bill of complaint—Continued.		
Exhibit "E-7"—Employer's contribution report covering employer and employee	46	148
Exhibit "E-8"—Employer's contribution report covering employer's contribution	47	150
Exhibit "E-9"—Employer's contribution report covering employer and employee	48	152
Exhibit "E-10"—Employer's notice card	49	154
Order granting restraining order, etc.	50	155
Order setting cause for hearing on application for injunction	54	158
Motion to dismiss	56	159
Answer to amended bill of complaint	58	161
Stipulation as to submission on application for injunction	77	178
Order granting temporary injunction	78	179
Stipulation re statement of evidence and order thereon	80	180
Statement of evidence	82	182
Affidavit of Joseph Halfpenny	82	182
Tables "A" to "D", inc.—Statistics relating to unemployment compensation law	91	188
Exhibit "E"—Statement prepared by Social Security Board	95	192
Exhibit "F"—Statistical summary of business conditions in Alabama, 1929-1935	112	207
Affidavit of Allan Little	113	208
W. W. Fulghum	122	214
George F. Peter	131	220
A. R. Forsyth	141	226
H. D. Warner	147	230
Exhibit "A"—Table showing number of salaried employees by months, 1930-1936	170	248
Exhibit "B"—Graph showing number of hourly workers, 1931-1936	173	250
Affidavit of Herbert S. Craigmile	174	251
Schedule "A"—Statement of estimated contributions, 1930-1938	178	253
Schedule "B"—Statement of total exits and those estimated to be eligible for benefits	179	254
Schedule "C"—Statement of weekly earnings and estimated weekly benefits	180	254
Schedule "D"—Statement of estimated unemployment benefits to former employees, etc.	181	255
Affidavit of Richard H. Childers	182	255
Alex C. Wellman	187	258
Herbert S. Salmon	194	262
J. M. Jackson, Jr.	203	267
Exhibit "A"—List of water and electric plants, etc.	207	269

	Original	Print
Record from D. C. U. S., Middle District of Alabama—Continued.		
Statement of evidence—Continued.		
Affidavit of Richard H. Childers—Continued.		
Exhibit "B"—Statement showing total number employees by months	208	271
Affidavit of F. W. Gist	209	271
Exhibit—Statement showing trend of employment in Alabama	212	273
Affidavit of J. L. Kaufman	216	277
Exhibit "A"—Report covering contributions, May 1, 1936 to August 31, 1936	221	280
Affidavit of Peyton Bibb	222	281
Exhibit "A"—Bulletin No. 11—Coal Mining in Alabama	225	283
Exhibit "B"—Bulletin No. 12—Coal Mining in Alabama	227	287
Findings of fact and conclusions of law	229	291
Decree	238	298
Bond on injunction.....(omitted in printing)..	240	
Stipulation as to writ of injunction	242	299
Petition for appeal	244	300
Assignments of error	246	301
Order allowing appeal	264	303
Bond on appeal .....(omitted in printing)..	268	
Citation and service.....(omitted in printing)..	271	
Notice of appeal	273	305
Præcipe for transcript of record	274–a	305
Clerk's certificate .....(omitted in printing)..	277	
Statement of points to be relied upon and designation as to record	278	308

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 691. In Equity

SOUTHERN COAL & COKE COMPANY, a Corporation, Plaintiff,

v.

ALBERT A. CARMICHAEL, as Attorney General, et al., Defendants

AMENDED BILL OF COMPLAINT

To the Honorable Judge of the District Court of the United States for the Middle District of Alabama:

Southern Coal & Coke Company, a corporation organized and existing under the laws of the State of Delaware and a citizen of said state, brings this its bill of complaint against Albert A. Carmichael, individually, and as Attorney General of the State of Alabama; J. L. Kaufman, individually, and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually, and as Governor of the State of Alabama, all citizens of said state, whose residences are hereinafter stated, and complains and says:

First. The plaintiff is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of Delaware and duly qualified to do business in the State of Alabama in accordance with the laws of the State of Alabama. Plaintiff's principal office and place of business in the State of Alabama is in Shelby County, Alabama.

[fol. 2] Second. Defendant Albert A. Carmichael is the Attorney General of the State of Alabama. Defendant J. L. Kaufman is the Chairman and a member of and defendants Lucien C. Brown and James A. Lipscomb are the associate members of the Unemployment Compensation Commission of the State of Alabama. Defendant Bibb

Graves is Governor of the State of Alabama. The defendants are the officials of the State of Alabama charged with the administration of the Unemployment Compensation Law of said State of Alabama as amended, herein referred to as the Alabama Act, and hereinafter more particularly described. Defendants are all citizens and residents of the State of Alabama and either now reside in Montgomery, Alabama, or as such officials of said State have their respective offices for the conduct of business of said State with which they are charged in the City of Montgomery, Montgomery County, Alabama, in the Middle District of Alabama. Each of the defendants is over the age of twenty-one years.

Third. The amount involved in this controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000) Dollars.

Fourth. This controversy arises under the Constitution of the United States and under the Constitution of the State of Alabama and is based upon the claimed and asserted unconstitutionality in whole or in part of said Unemployment Compensation Law, as amended, and upon the claimed and asserted unconstitutionality in whole or in part of the Federal Social Security Act (hereinafter referred to as the Federal Act, and hereinafter more particularly described), the said Federal Act being the indispensable base of the State Act, and the State Act being wholly incapable of operation unless the Federal Act is valid, operable and constitutional. Plaintiff seeks herein both an interlocutory and a final judgment suspending or restraining the enforcement, operation and execution of the Alabama Act, as amended, by restraining the action of the officials of the [fol. 3] State of Alabama above enumerated as defendants herein from the enforcement and execution thereof.

Fifth. In 1935 the Legislature of the State of Alabama enacted an Act, approved September 14, 1935, a true copy of which is hereto attached, marked "Exhibit A," and made a part hereof as though fully set forth herein. Said Act was first introduced in said Legislature in the Senate of said State as Senate Bill No. 395. Thereafter, in 1936, said Legislature enacted three certain amendments to said Alabama Act, all of which were approved April 21, 1936, true copies of which are hereto attached, marked respectively

"Exhibit B," "Exhibit C," and "Exhibit D," and made a part hereof as though fully set forth herein. Said Act and said amendments thereto are together hereinafter referred to as the Alabama Act.

Sixth. Since prior to 1915 plaintiff has been continuously engaged in the State of Alabama in the business of mining coal and selling the same in the markets of the United States. Plaintiff avers that all coal sold by it is delivered to the buyer F. O. B. cars at the railroad station, Boothton, Alabama, and that all its employees herein mentioned engage solely in mining and preparing coal for the market and perform no duties in interstate commerce. Plaintiff now has invested a large sum of money, to-wit, over $100,000 in an extensive plant for mining and selling its products at Boothton, Shelby County, Alabama, and in lands and mines and mining equipment in said County. In the conduct of said business over the period of its existence, plaintiff has acquired a substantial and valuable good will with customers in the State of Alabama and throughout the United States. Now and during the year 1935 and at all the times herein mentioned, plaintiff has employed in its operations, [fol. 4] to-wit, three hundred employees in the State of Alabama. Plaintiff has operated its mines and business during the entire period of its existence. Coal production in Alabama is of a seasonal nature. As an illustration of this, the average work days of plaintiff's operations (which is fairly consistent with the operations of other companies in Alabama engaged as is plaintiff in the mining and sale of domestic and steam coal) for the past six years have been 193 days in 1930, 206 in 1931, 116 in 1932, 186 in 1933, 214 in 1934, and 159 in 1935; and the average days that the operations have been idle have been 83 work days in 1930, 70 in 1931, 160 in 1932, 90 in 1933, 50 in 1934, and 105 in 1935. The fewer days of operation and the larger number of idle work days in 1932 and the first part of 1933, were due to the fact that at this time plaintiff temporarily reduced its employment personnel by approximately forty men (this reduction being the direct result of the loss by the company of one of its valuable accounts because of the fact that this customer changed its fuel requirements from coal to oil) and the decrease of average work days operated and increase of average work days idle for the year 1935 were due to the fact that a general strike existed

in the coal fields of Alabama, including the employees of the plaintiff, for fifty days during this year. Plaintiff avers that notwithstanding the seasonal nature of its business, the average labor turnover of the plaintiff during the same years with the exception of an increase in 1932 and 1935 (due to the loss of the account and the strike above referred to) has been approximately five per cent. Plaintiff avers that the small per cent. of labor turnover in its business is due to two causes, (a) the fact that a large percentage of plaintiff's employees have been continuously in its employ for a great many years and when there has occurred a cessation of work due to the seasonal nature of the business, or for other causes, instead of discharging such [fol. 5] employees, it has been and will continue to be the policy of the plaintiff to divide the work that is available among all employees; (b) because of the fact that a large number of plaintiff's employees have been recruited from the farm population and during times of inability to work in the mines, secured the additional needed support to prevent them from becoming public charges or supported by relief or other funds due to unemployment, by farming and gardening as an additional means of support for themselves and their families during times of unemployment. Plaintiff further avers on information which he has received and believes that the same situation exists in the coal industry in the State of Alabama as a whole; that a large number of the miners of Alabama have been recruited from the farm population in the general vicinity of the mines and make use of these farms as bases during the times of unemployment.

Seventh. Plaintiff avers that under the terms of the Alabama Act, from January, 1936, through August 31, 1936, plaintiff became liable to the Commission in the sum of $3,519.17, which amount in accordance with the contribution instructions of the Commission and in accordance with the order of the Commission, became due and payable to the Commission on or before the 5th day of October, 1936. Plaintiff further avers that the Commission demanded of the plaintiff prior to the filing of the bill of complaint herein the payment of said amount and declined to make any further extensions in reference to said payments.

Plaintiff further avers that in accordance with the order

of the Commission there will become due and payable from the plaintiff to the Commission on the 15th day of each month, beginning with the 15th day of October, 1936, the amounts of contributions for the immediately preceding month, based upon the schedule of contributions as pro- [fol. 6] vided for in said Act as applied to its total pay rolls for said months. Plaintiff further avers that its pay rolls have been and will continue to be substantially the same in amount that they have been during the year 1936.

Eighth. In 1935 the Seventy-fourth Congress of the United States adopted an Act (HR 7260-Public-No. 271) which was approved by the President of the United States August 14, 1935, the short title of which by Section 1105 thereof is the Federal "Social Security Act" and which is hereafter for convenience referred to as the Federal Act. Full reference is hereby made to the Federal Act as if the same were fully set forth herein. The provisions of the Alabama Act have been approved by the Social Security Board established by Title VII of the Federal Act, hereinafter for convenience referred to as the Federal Board, as conforming to the provisions of the Federal Act, as provided by Title IX, Section 903 of the Federal Act.

Ninth. Pursuant to the provisions of Section 9 of the Alabama Act, the Governor of the State of Alabama appointed defendants Kaufman, Brown and Lipscomb the members of the Unemployment Compensation Commission of Alabama, hereinafter for convenience referred to as the State Commission, and designated defendant Kaufman as Chairman thereof. The State Commission has organized itself, with numerous employees and is proceeding to the enforcement of the Alabama Act. It has opened and is maintaining offices in the Cities of Montgomery and Birmingham, Alabama. It has spent and is continuing to spend large sums of money in publicizing the provisions of the Alabama Act and of the Federal Act and in attempting to enforce the Alabama Act. It has prepared and published various instructions, rules and regulations, forms for returns, and other matters and things which it attempts to [fol. 7] require to be done and complied with in respect of the Alabama Act. It has ordered and directed plaintiff and other employers of labor in the State of Alabama, without reference to whether or not the Alabama Act purports

to apply to them, to furnish to the Commission on forms provided for the purpose, so-called "Employer's Status Reports." The State Commission has further demanded and is continuing to demand information of plaintiff and of other employers of labor in the State of Alabama with respect to pay rolls, papers and records of plaintiff and such other employers, including a weekly report and record of all persons performing any service for the reporting employers during 1935, information as to the nature and type of business conducted by such employers and as to their affiliation with any other employers, companies, holding companies or subsidiaries and as to the names, agents, wages and contract provisions in respect of their contracts with their employees. The State Commission has further notified plaintiff and other employers of labor in the State of Alabama that it requires and will continue to require of them the filing with the State Commission of monthly reports, and the initial payment on or before September 21, 1936, which date was advanced by the Commission until on or before October 5, 1936, of the amounts of contributions the payment of which by the plaintiff is provided for by the Alabama Act and monthly payments thereafter of the amounts of such contributions and that the State Commission intends to and will continue to enforce the provisions of the Alabama Act. Defendants have notified plaintiff and such other employers of labor that defendants intend to impose upon them and enforce the penalties imposed by the Alabama Act for violation of any of its provisions, and that in the absence of compliance with the provisions of the Alabama Act they will not issue the certificates with [fol. 8] respect to credits under the provisions of the Federal Act and that they will in accordance with the provisions of the Alabama Act proceed to enforce and administer it, including the deposit of contributions paid under the Alabama Act in and with the Unemployment Trust Fund provided for in Title IX, Section 904, of the Federal Act.

Plaintiff attaches hereto, marking the same "Exhibits E," "E-1" to "E-10", inclusive and making the same by reference a part hereof, full and correct copies of various papers which have been prepared and distributed to employers in the State of Alabama by said Commission pursuant to said Act. Plaintiff avers that copies of each and all of said papers were sent or delivered to it under the direction of said Commission.

Tenth. Plaintiff pays substantial amounts of State and county ad valorem taxes on its properties in the State of Alabama annually and also pays to the State of Alabama annually substantial amounts of other forms of taxes aggregating annually the sum of $7,300, and in addition to the other capacities in which plaintiff brings this suit, it also brings this suit as an interested taxpayer to the State of Alabama.

Eleventh. The State Act is inextricably interlocked with, and absolutely dependent upon, the Federal Act, and is not intended to and cannot operate without the Federal Act, and is incapable of administration, application or enforcement unless the Federal Act be valid and constitutiona-. Under the provisions of the Federal and the State Act, all funds collected under the State Act must immediately upon their collection be transmitted to agencies created by the Federal Act for deposit in a trust fund created by the Federal Act, and the funds so collected, transmitted and deposited can be disbursed only if, when and as they are released, and their disbursement agreed to by the said agencies so created by the Federal Act in accordance with the provisions of said Act. The only funds which have [fol. 9] been or are now available for the expenses of administering the State Act, which are very heavy, is an appropriation of Federal funds provided by the Federal Act for such purpose. The salaries of the Alabama Unemployment Compensation Commission, the wages and salaries of their numerous employees, representatives, field agents, auditors, inspectors, clerks and other job-holders; the expenses of maintaining the offices of the said Commission and its branches and other agencies and all other expenses requisite to the administration of the said Alabama law are payable solely from Federal funds provided by the Federal Act, and the amount of moneys to be provided for the administration of the Alabama Act is determinable solely by the Federal agencies created by the Federal Statute and such amounts are made available to the Alabama authorities only when and as the said Federal agencies determined to make them so available. Plaintiff is informed and believes that at the present time, when the system is only in its initial stage, such expenditures for administration of the Alabama Act are being made at the rate of approximately $— per annum. The Federal Act

appropriates for each fiscal year, after the fiscal year ending June 30, 1936, the sum of $49,000,000 to be expended upon the administration of State unemployment Acts, such as the Alabama Act, and plaintiff is informed and believes that when the system is in full operation, the pro rata portion of such administrative appropriation allocable to the State of Alabama from Federal funds will be in the neighborhood of $1,000,000 per annum. The Alabama Act is, in many other respects, so interlocked with and interdependent upon the Federal Act that it is utterly without effect or meaning and incapable of operation if the Federal statute be a void legislative enactment.

The said Federal statute, as plaintiff is informed and believes, is unconstitutional and void as an attempt by Con- [fol. 10] gress to shape, control and regulate purely internal and domestic affairs and policies of the states, to-wit, matters of compulsory insurance, pensions, minimum wages and relationships between employers and employees in no wise engaged in commerce between the states. The said Federal Act imposes heavy exactions, under the guise of taxes, upon employers and employees as the necessary means for the intended control by Congress of compulsory insurance, pensions and other internal affairs of the states; seeks to prescribe for the states policies of idleness pensions, minimum wages, compulsory insurance, and other matters of purely internal and domestic concern to the states; and said act in its intent and in its effect sets up, as an inescapable inducement to the respective states to submit to the imposition upon them of such Federally-determined domestic policies, a system by which on the one hand the states are coerced so to submit by reason of heavy taxation and on the other hand there is purchased, with staggering sums of Federal funds, submission to Federal regulation in respect of the said subjects, which said subjects are reserved to the States by the Constitution of the United States. The said exactions imposed by the Federal Act are not in fact taxes but are called taxes for the purpose of enabling the Congress, under the pretense of levying a tax, to exert a power not granted to Congress by the Constitution of the United States but reserved by the Tenth Amendment to the States.

Plaintiff is further informed and believes that the said Federal Act is unconstitutional not only on account of its utter departure from the prescribed orbit of Federal activities but also by reason of the fact that the due process

clause of the Fifth Amendment to the Constitution of the United States is violated by said statute, in that it seeks to adjust and regulate the relationship of employer and employee and to deprive them of their liberty of contract, and to interfere with their free control of the details of their own business and personal conduct, which matters no legislative body has constitutional power to control.

[fol. 11] Twelfth. Plaintiff is further advised by its counsel and believes and therefore avers that the Alabama Act and the contributions thereby sought to be exacted are unconstitutional, void, discriminatory and offensive and repugnant to the provisions of the Constitution of the United States in the following respects and for the following several reasons:

(a) The provisions thereof which require plaintiff and others similarly situated to withhold from compensation contracted by it to be paid to its employees prior to the enactment of the Alabama Act are in violation of the provisions of Section 10 of Article I of the Constitution of the United States which prohibits the State of Alabama from passing any law impairing the obligation of contracts.

(b) The provisions thereof which measure the liability of employers to comply therewith by the status of each employer during any twenty or more calender weeks in the year 1935 violate the provisions of Section 10 of Article I of the Constitution of the United States which prohibits the State of Alabama from passing any ex post facto law.

(c) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate the Fifth Amendment to the Constitution of the United States in that they provide that plaintiff, its employees and others similarly situated shall be deprived of their property without due process of law.

(d) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate the Fifth Amendment to the Constitution of the United States in that they provide for the taking of private property of plaintiff and its employees and others [fol. 12] similarly situated, for public use, without just compensation.

(e) The provisions thereof which require compulsory contributions by employers and employees, including this plain-

tiff, violate the Fourteenth Amendment to the Constitution of the United States in that they provide that plaintiff, its employees and others similarly situated, shall be deprived of their property without due process of law.

(f) The provisions thereof which require compulsory contribution by certain employers and employees while failing to require such contributions from all employers and employees in the State of Alabama deny to plaintiff, its employees and others similarly situated the equal protection of the laws and thereby violate the Fourteenth Amendment to the Constitution of the United States.

(g) The provisions thereof which require certain employers and employees, including this plaintiff and its employees, to comply therewith while exempting other employers and employees in the State of Alabama from compliance therewith violate the Fourteenth Amendment to the Constitution of the United States in that those required to comply, including this plaintiff and its employees, will have abridged unlawfully their privileges and immunities in the free conduct of their businesses and occupations and in their making of free contractual obligations.

(h) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate the Constitution of the United States in that the contributions therein sought to be exacted are not taxes for the support of the Government of the State but in [fol. 13] effect amount to the expropriation of money from one group for the benefit of another with no referenee to the regulation of the matter in which both groups are interested and in respect of which there is no power of legislative regulation.

(i) The provisions thereof which require compulsory contributions by employers, including this plaintiff, violate the Fifth Amendment to the Constitution of the United States in that the benefit payments to be made from the unemployment compensation fund therein provided for will be at a given rate while the contributions of individual employers to build up the fund will be at a disparate rate, thereby treating all employers as a single employer and depriving them of their property without due process of law.

(j) The provisions of the said State statute are violative of the sections of the Constitution of the United States

above referred to in the respects above set out, and also in the following respects:

There is nothing in the character of plaintiff's business which warrants singling out the plaintiff and others similarly situated to bear as an employer (rather than a taxpayer along with all other tax-payers) the burden and responsibility of unemployment in the State of Alabama, either as to employees of others or as to theoretical unemployment originating in a theoretical shut-down of plaintiff's plant or operations.

Therefore, the said State Act simply expropriates large sums of money from plaintiff to be delivered as an enforced contribution to certain favored persons or classes of persons.

(k) The said Act seeks to regulate the rate of wages to [fol. 14] be paid by plaintiff to its employees by prescribing, in effect, a minimum wage to be paid employees of plaintiff during periods of interruption of actual service, thereby invading plaintiff's liberty of contracting with its employees, in violation of the provisions of the Constitution of the United States above referred to.

Thirteenth. Plaintiff is advised by its counsel and believes and therefore avers that the Alabama Act and the contributions thereby sought to be exacted are unconstitutional, void, discriminatory and offensive and repugnant to the Constitution of the State of Alabama in the following several respects and for the following several reasons:

(a) The provisions thereof which require certain employers and employees, including this plaintiff and its employees, to comply therewith violate Section 6 of the Constitution of the State of Alabama in that in effect they deprive those required to comply therewith, including this plaintiff and its employees, of liberty and property without due process of law.

(b) The provisions thereof which measure the liability of employers to comply therewith by the status of each employer during any twenty or more calendar weeks in the year 1935 violate the provisions of Section 22 of the Constitution of the State of Alabama which prohibit the Legislature of the State from passing any ex post facto law.

(c) The provisions thereof which require plaintiff and others similarly situated to withhold from compensation

contracted by plaintiff to be paid to its employees prior to the enactment of the Alabama Act are in violation of Sec- [fol. 15] tion 22 of the Constitution of the State of Alabama which prohibits the Legislature of the State from passing any law impairing the obligation of Contracts.

(d) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate Section 23 of the Constitution of the State of Alabama in that they provide for the taking of private property of the plaintiff, its employees and others similarly situated, for public use without just compensation.

(e) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate Section 23 of the Constitution of the State of Alabama in that they provide for the taking of private property of the plaintiff, its employees and others similarly situated, for private use without compensation and without the consent of the owners.

(f) The provisions thereof which require compulsory contributions by certain employers and employees, including this plaintiff, while exempting other employers and employees in the State of Alabama from making such contributions violate Section 23 of the Constitution of the State of Alabama in that in effect they provide for taxation or forced subscription against or by certain citizens for the benefit of certain other citizens.

(g) The provisions thereof violate Section 35 of the Constitution of the State of Alabama which provides "That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression" in that the scheme and plan thereof is to restrict rather than to protect the enjoyment [fol. 16] of life, liberty and property by the citizens attempted to be made subject thereto and fails to operate equally with respect to all citizens of the State of Alabama and citizens of the United States domiciled in the State of Alabama.

(h) The provisions thereof which violate the declaration of rights in the Constitution of the State of Alabama violate Section 36 of said Constitution which provides

"That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate."

(i) The provisions thereof which provide for the exercise by the State Commission of its discretion with respect to the percentage of compulsory contributions attempted to be exacted thereby violate Section 42 of the Constitution of the State of Alabama which provides that "The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another," and amount to the attempted delegation by the Legislature of the legislative functions committed to it by the State Constitution.

(j) The provisions thereof which provide for the exercise by the State Commission of its discretion with respect to the percentage of compulsory contributions attempted to be exacted thereby violate Section 43 of the Constitution of the State of Alabama which provides that "In the government of this state, except in the instances in this Con- [fol. 17] stitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

(k) The provisions thereof which provide for the exercise by the State Commission of its discretion with respect to the percentage of compulsory contributions attempted to be exacted thereby violate Section 44 of the Constitution of the State of Alabama which provides that "The legislative power of this State shall be vested in the Senate and House of Representatives."

(l) The provisions thereof which authorize and direct the State Commission to cooperate in all necessary respects with the appropriate agencies and departments of the Fed-

eral Government in the administration of the Alabama Act and to comply with all reasonable Federal regulations with respect to such administration in the expenditures of moneys violate said Sections 42, 43 and 44 of the Constitution of the State of Alabama in that they amount to an attempt by the Legislature to unlawfully delegate matters of exclusive state sovereignty to Federal officials and agencies.

(m) The provisions thereof which require the State Commission to pay over all compulsory contributions collected under its supervision to the unemployment trust fund provided for by Title IX, Section 904, of the Federal Act, violate the provisions of the Constitution of the State of Alabama in that there is no delegation in said Constitution to the legislative or executive departments of the State government of any power to pay over moneys exacted from the [fol. 18] citizens of the State or from citizens of the United States within the State to the United States or to any agency or official of the United States, particularly inasmuch as the Federal Act provides and contemplates that moneys received from the State of Alabama and deposited in said unemployment trust fund may be used for the benefit of citizens of the United States who do not reside in the State of Alabama, and the Alabama Act in this respect in effect attempts to levy an unlawful exaction of tax for the benefit of others than citizens of the State of Alabama or citizens of the United States domiciled in the State of Alabama.

(n) The Legislature in adopting said Act violated the provisions of Section 45 of the Constitution of the State of Alabama in that said Act contains more than one subject and the title to said Act shows on its face that it contains more than one subject.

(o) Said Act was first introduced in the State Senate of the Legislature of Alabama and its adoption by the Legislature of Alabama violated Section 70 of the Constitution of the State of Alabama which provides that "All bills for raising revenue shall originate in the house of representatives."

(p) The provisions of said Act violate Section 72 of the Constitution of the State of Alabama which provides that "No money shall be paid out of the treasury except upon

appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof" in that the appropriation attempted to be made of all moneys in the unemployment administration fund at any time to the Unemployment Compensation Commission is not an appropriation of moneys of the State of Alabama in accordance with said [fol. 19] Section 72 of the Constitution of the State of Alabama for payment over to the unemployment trust fund provided for by the Federal Act, and such appropriation would in any event be invalid as an appropriation for purposes other than purposes of the State government.

(q) The provisions thereof violate Section 93 of the Constitution of the State of Alabama which provides "nor shall the State lend its money or its credit to any individual, association or corporation" in that in effect the Alabama Act seeks to lend the money and credit of the State to the Federal Board and to the individual beneficiaries, whoever they may be, whether or not citizens of the State or citizens of the United States residing in the State, of said unemployment trust fund provided for by the Federal Act.

(r) The provisions thereof violate Section 212 of the Constitution of the State of Alabama which provides that "The power to levy taxes shall not be delegated to individuals" and the Alabama Act attempts to delegate such power unlawfully to the State Commission.

(s) The provisions thereof violate Section 213 of the Constitution of the State of Alabama which provides that "After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, • • •" in that the provisions of the Alabama Act with respect to payment of benefits amount to the incurring of a new debt by the State in violation of said Section 213.

(t) The provisions thereof violate Section 214 of the Constitution of the State of Alabama which provides that "The [fol. 20] Legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this State" in that the illegal exactions sought to be required to be paid thereunder upon the value of the compensation paid by plaintiff and others similarly situated exceeds said sixty-five one-hundredths of one per cent.

(u) The provisions thereof violate Section 217 of the Constitution of the State of Alabama which provides that "The property of private corporations, associations and individuals of this State shall forever be taxed at the same rate" in that the Act seeks to tax property of a like nature that is compensation paid for services with respect to certain citizens and not taxing at the same rate or at any rate the same or similar property of other citizens.

(v) The provisions thereof violate the Constitution of the State of Alabama in that they are so interwoven with the provisions of the Federal Act both with respect to the illegal exactions thereupon sought to be levied against citizens of the State of Alabama and citizens of the United States domiciled in Alabama and with respect to the administrative features of both Acts as to amount to a surrender by the State of Alabama of its sovereignty to the United States and to officials and agencies of the United States.

(w) The provisions thereof violate the Income Tax Amendment to the Constitution of the State of Alabama, Article XXII, General Acts of 1933, page 116, in that they fail to provide exemptions or credits by said amendment prescribed and as to the employees of plaintiff and other employees similarly situated seek to assess or levy an income tax not on net income but on gross income in violation [fol. 21] of said Amendment.

Fourteenth. Plaintiff is informed and believes and therefore avers that one of the impelling, if not the only impelling reason why the Alabama Act was adopted by the Legislature of Alabama is that under the provisions of Title IX of the Federal Act taxes are levied on employers of eight or more persons, with certain classes of employment excepted therefrom, and a credit of 90% of the tax levied on such employers is allowed to taxpayers on the amount of taxes paid by them into an unemployment fund if the State adopt a law containing the provisions enumerated in Section 903 (a) of the Federal Act and such State law is approved by the Federal Board. The provisions with respect to such credit are contained in Sections 902 and 909 of the Federal Act.

Fifteenth. Plaintiff is informed and believes and therefore avers that the sole motive and object of the Federal Congress in providing in Title IX of the Federal Act for

the credit of 90% of the taxes or contributions paid into an unemployment fund under such a state law so approved by the Federal Board was to coerce and virtually force each state to adopt laws conforming to the will of Congress as to what is proper and suitable legislation for each of the several states, thereby depriving the states of their freedom of action in determining for themselves necessary and desirable laws for their residents or persons doing business within their borders with reference to matters as to which the states have sole and exclusive jurisdiction and which are concerns reserved to the states under the Constitution of the United States. Plaintiff further avers that only, [fol. 22] to wit, thirty days intervened between the time the Federal Act was adopted by Congress and the time that the Alabama Act was adopted by the Legislature of Alabama, and plaintiff is informed and believes and therefore avers that this short lapse of time, together with the fact that the provisions of the Federal Act and the provisions of the Alabama Act apply to substantially the same classes of persons and exempt substantially the same classes of employment and the fact that the provisions with respect to the administration of the two Acts and the fact that Title III of the Federal Act includes appropriations to be given free to such states as might adopt a law containing substantially the provisions prescribed by said Title III, which provisions are contained in the Alabama Act, conditioned upon the approval of such state acts by the Federal Board, show that the Legislature of Alabama was coerced or compelled or strongly influenced by the provisions of the Federal Act in adopting the Alabama Act. Section 5½ of the Act of the Legislature of Alabama approved by the Governor April 21, 1936, Exhibit "B" hereto, provides as follows:

"It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or Title Nine of the Federal 'Social Security Act' approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of em-

ployees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers."

Sixteenth. Neither the Alabama Act nor any other statute of the State of Alabama provides for refund of taxes or contributions wrongfully exacted from plaintiff and its em- [fol. 23] ployees and from other employers and their employees similarly situated in the event the Alabama Act is declared unconstitutional or void, except to the extent set forth in said Section 5½ of the Act of the Legislature of Alabama approved April 21, 1936, Exhibit "B" hereto, which in effect provides for refund of only so much of the payments made under the Alabama Act as may not be expended at the time therein provided and which in effect, even as to that balance, is inoperative as the Federal Act contains no provisions for the repayment to the State Commission or to the State of Alabama of the moneys which by the terms of the Alabama Act are required to be deposited by the State Commission in the Unemployment Trust Fund provided for by the Federal Act. Plaintiff is informed and believes and therefore avers that there is no suit now pending before the Supreme Court of the United States to determine the validity of Title III or of Title IX of the Federal Act and that it will be a long period of time, to wit, three years before said Court will decide the validity thereof. Plaintiff is advised by counsel and believes and therefore avers that Title III and Title IX of the Federal Act and the Alabama Act are each part of one comprehensive plan to exact from substantially the same classes of employers and employees domiciled and doing business in Alabama taxes or contributions to be handled and expended pursuant to one general plan and scheme and that in determining many of the questions presented as to the validity and constitutionality of the Alabama Act under the Constitution of the United States and under the Constitution of the State of Alabama it is necessary to construe the provisions of the Federal Act and also necessary to determine whether Title III and Title [fol. 24] IX of the Federal Act are constitutional. Plaintiff is advised by counsel and believes and therefore avers that both Title III and Title IX of the Federal Act are unconstitutional, void, discriminatory and offensive and repugnant to the provisions of the Constitution of the United

States in the following several respects and for the following several reasons:

(a) The provisions of Title III of the Federal Act violate Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States in that Section 302 (a) illegally delegates to the Federal Board legislative powers vested by the Constitution solely in the Congress and such attempted delegation fails to prescribe and limit definite standards under which the powers attempted to be delegated to the Federal Board may be exercised by it. Said Board is directed to determine and certify for payment to each state meeting the requirements of the Federal Act such amount of the Federal appropriation found by it to be necessary for the proper administration of the law during the fiscal year in which the payment is to be made but it is provided that such determination shall be based upon (1) the population of the State, (2) an estimate of the number of persons covered by the state law and of the cost of proper administration of such law—both matters of reasonably definite determination—and (3) such other factors as the Board finds relevant—a matter unlimited and undefined by any standard and purely in the arbitrary and uncontrolled discretion of the Federal Board.

(b) The provisions of Title III of the Federal Act violate the Constitution of the United States in that by the appropriations therein contained and the conditions with respect [fol. 25] to legislation therein required of the respective states Congress has sought to coerce and compel the legislatures of the several states to adopt specific legislation and thus to govern the concerns reserved to the states by the Constitution.

(c) The provisions of Section 303 (b), Title III, of the Federal Act violate the Constitution of the United States in that investing in the Federal Board the right to refuse any state the benefit of the appropriations made by Section 301 of said Title III and to refuse certifications to the Secretary of the Treasury required as a condition precedent to payment from such appropriations upon the sole and discretionary determination of the Federal Board as to whether there has been legal denial of unemployment compensation payments under the provisions of the state law or compliance with the State law and thus to govern the concerns

reserved to the states by the Constitution and to substitute the determination of a Federal agency for the determination of the state courts upon the construction, operation and rights arising under a state law.

(d) The provisions of Title IX of the Federal Act, Section 903, violate the Constitution of the United States in that thereby and by the other provisions of said Title IX Congress has sought to compel and coerce the legislatures of the several states to adopt specific legislation and to surrender control of state funds to a Federal agency and thus to govern the concerns reserved to the states by the Constitution.

(e) The provisions of Title IX of the Federal Act, Section 903 (b), violate the Constitution of the United States in that investing in the Federal Board the discretion to certify or [fol. 26] not to certify to the Secretary of the Treasury any state which the Board finds has changed its law so that it no longer contains the provisions specified in the Federal Act, or as with respect to a particular taxable year failed to comply substantially with any such provision, upon the sole and discretionary determination of the Federal Board that Congress has violated the foundation principles of the dual system of government under the Constitution of the United States and attempted to govern the concerns reserved to the states by the Constitution of the United States and to substitute the determination of a Federal agency for the determination of the state courts upon the construction, operation and rights arising under a state law.

(f) The provisions thereof which require so-called taxes to be paid by employers and employees, including this plaintiff and its employees, violate the Fifth Amendment to the Constitution of the United States in that they provide that plaintiff, its employees and others similarly situated, shall be deprived of their property without due process of law.

(g) The provisions thereof which require so-called taxes to be paid by employers and employees, including this plaintiff and its employees, violate the Fifth Amendment to the Constitution of the United States in that they provide for the taking of private property of the plaintiff, its employees and others similarly situated, for public use without just compensation.

(h) The provisions thereof which require the payment of so-called taxes by certain employers and employees while failing to require such payments from all employers and employees in the United States violate the Constitution [fol. 27] of the United States in that they deny the equal protection of the laws to the plaintiff, its employees and others similarly situated.

(i) The provisions thereof violate the Tenth Amendment to the Constitution of the United States in that they seek to regulate the affairs of the respective states over which the United States has no control under the provisions of the Constitution and to govern the concerns reserved to the states by the Constitution.

(j) The provisions thereof which seek to levy taxes thereunder violate the Constitution of the United States in that the taxes therein sought to be levied are not taxes for the support of the Government authorized by the Constitution of the United States but illegal exactions designed to expropriate money from one group of citizens of the United States for the benefit of another group of citizens of the United States in contravention of the powers delegated by the Constitution of the United States to the United States to levy taxes.

Seventeenth. Said Act is by its terms designed to regulate in an unconstitutional manner matters concerning the life, liberty and property of citizens of the United States and the taxes thereby levied denominated excise taxes or income taxes are not such but merely exactions in an attempt through the taxing power to regulate concerns over which the United States has no control.

Eighteenth. Plaintiff will suffer great and irreparable injury from and because of the matters herein complained of if the Alabama Act is enforced by defendants against plaintiff, for which injury it has no adequate remedy at law and no redress or remedy except in a court of equity [fol. 28] unless the injunctions prayed for herein are granted, for the following separate and several, among other, reasons:

(a) If plaintiff recognizes the validity of the Alabama Act and remits or pays to the State Commission the compulsory contributions demanded by the Commission of plain-

tiff under the terms and provisions of the Alabama Act, it will (1) suffer the loss of a large sum of money, to wit, many thousands of dollars; (2) be compelled to undergo the expense of and loss of large sums of money which plaintiff will necessarily expend in keeping the voluminous records and reports required by the State Commission in its administration of the Alabama Act, the total amount which will be substantial but at this time is unascertainable; (3) to be forced to furnish to the State Commission information with respect to its employees and their relationship to it which constitutes and is a valuable property right of plaintiff and which both plaintiff and its employees desire to be kept confidential between them; (4) have added to the cost of plaintiff's products by reason of the compulsory contributions imposed by the Alabama Act and additional expense incident thereto substantial cost which will seriously interfere with plaintiff's ability to successfully compete with manufacturers of similar products located in states which have not enacted laws similar to the Alabama Act and lose business which will jeopardize plaintiff's further continuance in business; (5) subject itself to liability for repayment to its employees of the amounts with interest required to be withheld by it out of the compensation of said employees under the terms and provisions of the Alabama Act together with the large cost incident to the defense of a multiplicity of suits by such employees and the expense and annoyance of such a multiplicity of suits instituted [fol. 29] for the purposes of the collection of such sums.

(b) If plaintiff declines to recognize the validity of the Alabama Act and refuses to remit or pay to the State Commission the compulsory contributions demanded by the commission under the terms and provisions of the Alabama Act, plaintiff will among other things (1) subject itself to the attempted imposition of the separate and several compulsory contributions, taxes, penalties, exactions and discriminations imposed upon plaintiff by the Alabama Act; (2) subject itself to the attempted imposition of fine or imprisonment or both for violation of any provision of the Alabama Act for which a penalty is not thereby expressly provided for; (3) subject itself to the attempted assessment and collection of the separate and several compulsory contributions or taxes and the attempted imposition of the penalties, exactions and discriminations imposed upon plaintiff by the

provisions of the Federal Act; (4) be deprived of the credits provided by the Federal Act for those employers who have been certified to the Secretary of the Treasury of the United States as having complied with the provisions of the Alabama Act; (5) to be harassed and put to large expense in defense of an unseemly multiplicity of suits in the attempted collection of the compulsory contributions or taxes sought to be levied by the Alabama Act; (6) be harassed and put to large expense in defense of an unseemly multiplicity of suits in the attempted collection of the so-called excise and other taxes sought to be levied by the Federal Act.

(c) If plaintiff pays in accordance with the provisions of the Alabama Act and the demand of the State Commission the compulsory contributions or taxes provided for and [fol. 30] demanded, it will be without any adequate legal remedy to recover or recapture the amounts so paid because (1) the Alabama Act provides no remedy of any kind for the recovery of any such amounts; (2) no other law of the State of Alabama provides a remedy of any kind for the recovery of such amounts; (3) no appropriation has been made out of which and with which any refunds or recoveries of such amounts may be paid; (4) the Alabama Act and the demands of the State Commission thereunder requiring separate and periodical payments, each separate payment would be a separate transaction, which would involve a multiplicity of demands and suits against the plaintiff in an attempt to recover the same; (5) the financial condition of the State of Alabama is such that if plaintiff should pay such amounts and sue to recover the same, it would not realize on any judgment therefor; (6) by the Alabama Act the State Commission is required immediately upon receipt of any payments thereunder to deposit or invest the same in the Unemployment Trust Fund provided for by the Federal Act, thereby removing the amounts so deposited or invested from beyond the jurisdiction of any court, State or Federal, functioning in the State of Alabama; (7) the Federal Act does not contain any remedy which authorizes suits for the recovery of any funds deposited or invested in said Unemployment Trust Fund; (8) if judgment should be recovered by plaintiff against the defendants for any amounts paid by plaintiff to any of the defendants pursuant to the Alabama Act and the demands made upon plaintiff by the defendants thereunder, such judgment could not be collected against the defendants individually because plaintiff is informed and believes and

therefore avers that they and each of them are financially unable to respond in damages to such judgments; (9) should [fol. 31] any money be made available by the State of Alabama by appropriations for the repayment of such funds, such appropriations will be subject to the Budget Amendment of the Constitution of the State of Alabama, thereby reducing the amount of recovery, to-wit, 50% or more; (10) plaintiff not only would be without a forum in which to maintain an action against the Federal Government or any department thereof, but there would be lacking any privity of any kind between plaintiff and the Federal Government or any department thereof in reference to the contributions collected from plaintiff and turned over to the Federal Board; (11) by virtue of the said Budget Amendment and the statute executory thereof, all charges, expenses and appropriations of the State Government (except certain classes of charges to which plaintiff's claim does not belong, constituting preferred charges) are prorated and all such charges and appropriations are conditional, contingent and lapsable, and the only moneys paid to those of the non-preferred class are prorated moneys remaining unexpended at the end of each fiscal year, all such appropriations, claims and charges automatically expiring at the end of each such fiscal year; (12) plaintiff will be without remedy against the State of Alabama or the said Commission because none of the moneys paid by plaintiff will remain in the hands of the State or said Commission and plaintiff will be without remedy against the Government of the United States, or any officer, representative or department thereof, because there will be no privity between plaintiff and the said Government of the United States, or any of its officers, representatives or departments, and because there is no law under which plaintiff would have the right to make any enforcible demand upon the Federal Government, or any officer, representative [fol. 32] or department thereof, for restitution, Plaintiff will, therefore, be without any efficacious method of recovering back sums so paid under an unconstitutional enactment because dealing with two Governments and being without a fixed and definite right as against either and being without a known remedy as against either,—there being no ascertained principle of law by which plaintiff's rights are determinable as being against the one Government or the other.

Nineteenth. Plaintiff is informed and believes and therefore avers that there are in the State of Alabama a large number, approximately, to-wit, 1,000, of employers of eight or more employees, who occupy the same relation and status to the Alabama Act and to the Federal Act as does the plaintiff and that the question herein involved is one of common or general interest to all of such persons, all of whom, together with the plaintiff, constitute a class so numerous as to make it impracticable to bring them all before the court. Wherefore plaintiff, of its own volition and also at the request of approximately, to-wit, 100 members of such class, brings this suit for the whole of such class. In the event plaintiff is not authorized by this court to bring and prosecute this suit for the whole of the class above referred to, it invites the intervention of such employers as party plaintiffs herein and joins in their request for intervention in such cases wherein petitions are filed praying for such right of intervention and where the facts set forth in such petitions show that the petitioners in all respects occupy the same relationship and status towards this court and towards the subject matter of this suit as is the status and relationship of plaintiff.

Twentieth. Plaintiff is informed and believes and therefore avers that there are in the State of Alabama a large [fol. 33] number of employers of eight or more employees situated similar to the plaintiff with respect to the Alabama Act and the Federal Act who will bring suits similar to this suit for the purpose of having the validity and constitutionality of the Alabama Act and of the Federal Act determined by courts of proper jurisdiction and that there will result, unless injunctions herein prayed for are issued, a multiplicity of suits with their consequent heavy cost and annoyance.

Twenty-first. Defendants have threatened to perform and continue to perform all the duties imposed upon them by the Alabama Act, including the collection of the compulsory contributions thereby sought to be levied and attempted enforcement of the imposition of the penalties, exactions and discriminations imposed thereby upon the plaintiff and its employees and other employers of labor and their employees similarly situated, and have stated that suits and complaints which defendants are authorized by the Alabama Act to bring against those who have not fully complied there-

with will be brought and prosecuted and that the penalties provided by the Act for violation of any of its terms will be attempted to be enforced by them. Unless the injunctions herein prayed for are granted, the bringing of such suits and their prosecution will work upon the plaintiff and others similarly situated irreparable injury.

Therefore, plaintiff prays that your Honorable Court will make parties defendant herein the defendants hereinabove named and cause subpoenas to issue from this Honorable Court to each and every of the defendants, requiring them to appear in answer to this bill in equity within such time [fol. 34] as may be fixed by this Honorable Court, and that the Judge of this Court call to his assistance to hear and determine the application of plaintiff for an interlocutory injunction in the premises two other judges, at least one of whom shall be a Supreme Court Justice or a Circuit Judge, as required by the laws of the United States in such cases, and set down the hearing hereof at such date as may be fixed by your Honorable Court upon five days' notice of such hearing to the defendants as provided by the statutes of the United States in such cases made and provided, and that upon such hearing this Court will grant an interlocutory injunction suspending and restraining the enforcement and operation or execution of the Alabama Act and of the compulsory contributions, fines, imprisonment, taxes, penalties, exactions and discriminations therein provided for by restraining the action of the defendants and each of them from the enforcement and execution of the Alabama Act and of such compulsory contributions, fines, imprisonment, taxes, penalties, exactions and discriminations, and that upon a final hearing of this cause a permanent injunction of like effect be issued and granted against the defendants and that plaintiff have such other and further relief in the premises as to this Court may seem just. Plaintiff further prays that this Court decree and adjudge that the question involved herein is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the Court and that this suit be considered, adjudged and decreed as being a suit brought by the plaintiff for itself and for the whole of such class.

Plaintiff prays for such other, further and more general

[fol. 35] relief, as in equity and good conscience it may be entitled to, and it will ever pray.

Borden Burr, Niel P. Sterne, Marion Rushton, Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Knox, Acker, Sterne & Liles, Rushton, Crenshaw & Rushton, of Counsel.

Footnote.—Defendants are required to answer the foregoing bill of complaint and each and every paragraph thereof, but answer under oath is hereby expressly waived.

Borden Burr, Niel P. Sterne, Marion Rushton, Attorneys for Plaintiff.

[fols. 36–36-1] Exhibit "A" to Bill of Complaint

Alabama General Laws

(Regular Session, 1935)

No. 447) (S. 395—Stephens

An Act

To create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefit; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes"; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights

and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act.

Be it enacted by the Legislature of Alabama:

Section 1. Short Title—This Act shall be known and may be cited as the "Unemployment Compensation Law".

Section 2. Definitions—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise: (a) "Benefits" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act. (b) "Commission" means the Unemployment Compensation Commission established by this Act, or its authorized representative. (c) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this Act. (d) Eligibility. An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this Act from receiving benefits for such week of unemployment. (e) "Employee" means any [fol. 36-2] person employed by an employer subject to this act and in employment subject to this Act. (f) "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an "employer" subject hereto, and in determining for what con-

tributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the State, in all of his several places of employment maintained within the state, shall be treated as employed by a single "employer" for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single "employer" for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any per-
[fol. 36-3] son within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission. (g) "Employment" means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all

states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to: (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States; (6) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions; (7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (h) "Employment Office" means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission. (i) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee. (1) The applicable [fol. 36-4] "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers. (2) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can be lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly

hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked. (j) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid. (k) "Partial Unemployment". An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible. (l) "Payroll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes newly subject to this Act. (m) "Total Unemployment". An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged. (n) "Unemployment Administration Fund" means the Unem-
[fol. 36-5] ployment Compensation Administration Fund established by this Act. (o) "Wages" means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages. (p) "Waiting-period-unit" means a period (for which no benefits are pay-

able but during which the employee is in all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act. (q) "Week" means calendar week. (r) "Week of employment" means each calendar week (occurring at least one year after contributions first became generally due under this act from employers then subject hereto, and occurring after any probationary period or periods required hereunder) within which the person in question performed any employment subject to this Act for any employer subject to this Act; provided, however, that any week (occurring within the customary school vacation periods) in which an employer employed an employee who attended a school, college or university in the last preceding school term, shall not be counted as a "week of employment" in determining the benefit rights of such employee under this Act.

Section 3. Unemployment Compensation Fund—(a) Fund. There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund. (b) Withdrawals. The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rules shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release [fol. 36-6] by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. (c) Treasurer. The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all

moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this Act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act. (d) Deposit. All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the "Unemployment Trust Fund" of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

Section 4. Contributions—(a) Payment. On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this Act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this Act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe. (b) Rates of Contributions. Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month: (1) With respect to employment during the calendar year 1936 the rate shall be ninety one-hundredths (.90) of one per centum; (2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of per centum; (3) With respect to employment during the [fol. 36-7] calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of per centum. (c) Future Rates, Based on Benefit Experience. Based on the actual contribution and benefit experience of employ-

ers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules. (d) Contributions by Employees. Each employee shall contribute to the fund one per centum of his wages. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his payroll records, and shall transmit all such contributions to the fund pursuant to general commission rules.

Section 5. Benefits—(a) Payment of Benefits. After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this Act, and shall be paid through the employment offices at such times and in such manner as the commission may pre- [fol. 36-8] scribe. (b) Weekly Benefits for Total Unemployment. An employee totally unemployed and eligible in

any week shall be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week. (c) Weekly Benefits for Partial Unemployment. An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net-earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week. (d) One-to-Four Ratio of Benefits to Employment. The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his earliest weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment. (e) Maximum Weeks of Benefit in Any Year. Benefits shall be paid each employee for the weeks during which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commisssion rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks. (f) Additional Benefits (One-to-Twenty Ratio) An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this Act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

[fol. 36-9] Section 6. Benefits Eligibility Conditions—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either (1) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or (2) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits. (b) Availability and Registration for Work. An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed. (c) Waiting Period. Benefits shall be payable to an employee only for his weeks of unemployment occuring subsequent to a "waiting period" whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section. (d) During Trade Disputes. An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed. (e) Voluntary Leaving An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks. (f) Dis-

charge for Misconduct. An employee who has been discharged for proved misconduct connected with his employ-
[fol. 36-10] ment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case. (g) Refusal of Suitable Employment. If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. "Suitable employment" shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (2) if the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality; (3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

Section 7. Settlement of Benefit Claims.—(a) Filing. Benefit claims shall be filed at the employment office, pursuant to general commission rules. (b) Initial Determination. A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within five calendar days after such notification was delivered to him or was mailed to his last known address. (c) Appeals. Unless such request for a hearing is withdrawn the claims thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose.

The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission [fol. 36-11] except in cases where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review. (d) Appeal Tribunals. To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of one full-time salaried examiner (or commissioner) who shall serve as chairman, and of two other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses) and shall serve until replaced by the commission except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session. (e) Procedure. The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed. (f) Commission Review. The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within ten days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony. (g) Appeal to Courts. Except as thus provided, any decision (unless appealed pursuant to general commission rules) shall, ten days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial

review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission) within ten days after a decision hereunder has become the final decision of [fol. 36-12] the commission in the disputed case. (h) Oaths and Witnesses. In the discharge of their duties under this section any deputy, any member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas (requested by the commissioner of and served by the officers of the circuit court having jurisdiction of the parties) to compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general commission rules, from the unemployment administration fund.

Section 8. Court Review.—(a) Within ten (10) days after the decision of the Commission has become final, either party may appeal to the Circuit Court, sitting in the county of the residence of the employee, from such decision. Upon the filing of any such appeal notice thereof shall be served upon the Commission by the appellant. Such appeals shall be heard by the Court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Said appeal shall be effected by the filing of a brief statement of his grievances by the appellant with the Clerk of said court. (b) An appeal may be taken from a decision of such Court to the Court of Appeals of Alabama or the Supreme Court of Alabama as now provided by law.

Section 9. Unemployment Compensation Commission.—(a) Organization. There is hereby created a commission of three members, to be known as the Unemployment Compensation Commission of Alabama. The members of the commission shall be appointed by the Governor within

ninety days after the passage of this Act. The Governor shall designate one member as Chairman. The commissioners thus appointed shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years. At the expiration of such initial terms appointments shall be made for a term of six years in each case. Any appointment to a vacancy shall be for the unexpired term in ques- [fol. 36-13] tion. No commissioner shall, during his term of office, serve as an officer or committee member of any political party organization. (b) Salaries. The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary travelling expenses. (c) Meetings. The commission shall meet one day each calendar month. It shall meet such additional days each month as the business of the commission may require, when authorized by the Governor. (d) Quorum. Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission so long as a majority remain. The commission shall determine its own organization and methods of procedure.

Section 10. Administration.—(a) Duties and Power of Commission. It shall be the duty of the commission to administer this Act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this Act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the governor and the legislature thereof, and make recommendations accordingly. (b) General Commis-

sion Rules—General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative statewide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. [fol. 36-14] Such rules may be amended, in the same manner as is above provided for their adoption. (c) Publication. The Commission shall cause to be printed in proper form for distribution to the public the text of this Act, the commission's general rules, its annual report to the governor, and any other material the commission deems revelant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same. (d) Personnel. The Commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its function. All positions in the administration of this Act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a commissioner. The commission may in its discretion bond any person handling moneys or signing checks hereunder. (e) Advisory Councils. The Governor shall appoint a state-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formu-

lating policies and discussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary travelling expenses, when approved by the Governor. Said state-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this Act and to the other Acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience [fol. 36-15] prepare recommendations as to changes, amendments or modifications of such Acts and laws of the State of Alabama, and particularly this Act, and said recommendations shall be submitted to the Governor and to the Legislature as its next session and at such succeeding sessions as said council may deem proper. (f) Employment Stabilization. It shall be one of the purposes of this Act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies. (g) Records and Reports. Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may re-

quire from any employer (of any person in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this Act. (h) Representation in Court. On request of the commission the attorney general shall represent the commission and the state in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the commission with the approval of the Governor and except as otherwise provided in this act. (i) State Federal Cooperation. The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the federal gov-
[fol. 36-16] ernment, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested federal agency or department; and to accept any sums allotted or apportioned to the state for such administration, and to comply with all reasonable federal regulations governing the expenditures of such sums. (j) Employment Offices. The commission shall establish and maintain such free public employment offices, including such branch offices, as may be necessary for the proper administration of this Act, when and if such officers are not maintained by the federal government in the state and their services made available to the state. All moneys thereafter made available by or received by the state for the state employment service shall be paid to (and expended from) the unemployment administration fund, and a special "employment service account" shall be maintained for this purpose as a part of said fund.

Section 11. Acceptance of Act of Congress.—Relating to Employment Service. (a) Formal Acceptance. The state hereby accepts the provisions of the Wagner-Peyser Act, approved June 6, 1933 (48 Stat. 113, United States Code, Title 29, Section 49 (c); "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and

for other purposes" in conformity with Section 4 thereof, and will observe and comply with the requirements of said Act of Congress. (b) State Employment Service. There is hereby created, under the Unemployment Compensation Commission, a division to be known as the "Alabama State Employment Service," which shall be affiliated with the United States Employment Service. The said division is hereby designated and constituted the agency of this state for the purposes of the Wagner-Peyser Act. The said division shall be administered by a full-time salaried director, who is hereby given full power to cooperate with all authorities of the United States having powers or duties under the said Act of Congress and to do and perform all things necessary to secure to this state the benefits of the said Act of Congress in the promotion and maintenance of a system of public employment offices. (c) Financing. All moneys made available by or received by this State under said Act of Congress shall be paid into a special "employment service account" in the unemployment administration fund, and said moneys are hereby appropriated and made available to the "Alabama State Employment Service" to be expended as provided by this Act and by said Act of Congress.

[fol. 36-17] Section 12. Reciprocal Benefit Arrangements with Other States.—The Commission is hereby authorized, subject to approval by the governor, upon such terms as in its judgment will not result in any loss to the fund, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compensation system established by any state law or by an Act of Congress, as to persons who have (after acquiring rights to benefits under this Act or under such other system) newly come under this Act or under such other system, whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

Section 13. Protection of Rights and Benefits.—(a) Waiver of Rights Void. No agreement by an employee to waive his right to benefit or any other right under this Act

shall be valid. No agreement by an employee or by employees to pay all or any portion of the contributions required under this act from employers shall be valid. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this Act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation. (b) Limitation of Fees. No employee shall be charged fees of any kind by the commission or its representatives, in any proceeding under this Act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than ten per centum of the maximum benefits at issue in such proceeding or court action. (c) No Assignment or Garnishment of Benefits. Benefits which are due or may become due under this Act shall not be assignable before payment, but this provision shall not affect the survival thereof; and when awarded, adjudged, or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

[fol. 36-18] Section 14. Collection of Contributions.—(a) Interest on Tardy Payments. If any employer fails to make promptly, by the date it becomes due hereunder, any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of one per centum per month from the date such payment became due until paid, pursuant to general commission rules. (b) Bankruptcy. In the event of an employers' dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefits of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this sub-section shall not impair the lien of any judgment entered upon any award. (c) Court Action. Upon

complaint of the commission, the attorney-general shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (of any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

Section 15. Penalties.—(a) Whoever wilfully makes a false statement or representation to obtain or increase any benefit or other payment under this Act, either for himself, or for any other person, shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense. (b) Any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required of such employer under this act, or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records as lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions [fol. 36-19] required from employers, or who tries to induce any employee to waive any right under this act, shall upon conviction be punished by a fine of not less than twenty nor more than two hundred dollars, or by imprisonment in the county jail not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation, and each day of such failure or refusal, and each such deduction from wages, and each such attempt to induce shall constitute a separate and distinct offense. (c) Any violation, of any provisions of this Act, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment. (d) On complaint of the commission the fines specified or provided in this sec-

tion may be collected by the state in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

Section 16. Unemployment Administration Fund.—(a) Special Fund. There is hereby created the "Unemployment Compensation Administration Fund", to consist of all moneys received by the state or by the commission for the administration of this act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund shall be handled by the state treasurer as other state moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith. (b) Federal Aids. All federal moneys allotted or apportioned to the State by the federal Social Security Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund. (c) Employment Service Account. A special "employment service account" shall be maintained as a part of said fund.

Section 17. Appropriations.—(a) All moneys in the unemployment administration fund at any time are hereby appropriated to the unemployment compensation commission including its employment service division. (b) There is hereby appropriated, to the employment service account of the unemployment administration fund, from any money in the state treasury not otherwise appropriated, for the fiscal year ending September 30, 1935 and annually thereafter on the first day of October, the sum of $10,000.

[fol. 36-20] Section 18. Saving Clause.—The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal.

Section 19. Separability of Provisions.—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20. Effective Date.—This act shall take effect upon its enactment.

Approved September 14, 1935.

[fols. 37-37-1] EXHIBIT "B" TO COMPLAINT

Each Probate Judge, Sheriff, Clerk and Register of the Circuit Court is required by law to preserve this Act in a book kept for that purpose in his office for the information of the public until Acts are published in a permanent form and shall be open to inspection at all reasonable hours of the day.

Alabama General Laws

(Extraordinary Session, 1936)

No. 156.) (H. 204—Owens (Etowah.)

AN ACT

To amend the title, and section 10, and section 16, and section 17, and to repeal section 11 of an act approved September 14, 1935, Entitled "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to accept the benefit of an Act of Congress, approved June 6, 1933, Entitled "An Act to provide for the establishment of a National employment system and for cooperation with the states in the promotion of such system and for other purposes", to provide for the creation of An Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this act; to establish an unemployment administration fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this act". (1935 Acts, Page 950).

Be it enacted by the Legislature of Alabama:

Section 1. That the title of said act be and the same is hereby amended so as to read as follows: An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this act; to establish an unemployment administration fund; to appropriate [fol. 37-2] funds to maintain the same; and to retain the right to amend or repeal this act.

Section 2. That section 10 be and the same is hereby amended so as to read as follows:

Section 10. Administration.—(a) Duties and Powers of Commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the Governor and the legislature thereof, and make recommendations accordingly. (b) Gen-

eral Commission Rules. General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative state-wide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. Such rules may be amended, in the same manner as is above provided for their adoption. (c) Publication. The Commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same. (d) Personnel. The commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a non-partisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any [fol. 37-3] such person to do any act or acts which could lawfully be done by a commissioner. The Commission may in its discretion bond any person handling moneys or signing checks hereunder. (e) Advisory Councils. The Governor shall appoint a state-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formulating policies and dis-

cussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary traveling expenses, when approved by the Governor. Said State-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this act and to the other acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience prepare recommendations as to changes, amendments or modifications of such acts and laws of the State of Alabama, and particularly this act, and said recommendations shall be submitted to the Governor and to the Legislature at its next session and at such succeeding sessions as said council may deem proper. (f) Employment Stabilization. It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies. (g) Records and Reports. Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the [fol. 37-4] commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any per-

son in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act. (h) Representation in Court. On request of the commission the attorney general shall represent the commission and the State in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the Commission with the approval of the Governor, and except as otherwise provided in this act. (i) State Federal Cooperation. The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested Federal agency or department, and to accept any sums allotted or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditures of such sums.

Section 3. That Section 11 be and the same is hereby repealed.

Section 4. That Section 16 be and the same is hereby amended so as to read as follows:

Section 16. Unemployment Administration Fund.—(a) Special Fund. There is hereby created the "Unemployment Compensation Administration Fund, to consist of all moneys received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund shall be handled by the State Treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith. (b) Federal Aids. All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency) for the

administration of this act shall be paid into the unemployment administration fund. Sub-division C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Com- [fol. 37-5] pensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred.

Section 5. That section 17 be and the same is hereby amended so as to read as follows; Section 17. Appropriations. All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment Compensation Commission.

Section 5½. It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Section 6. That if any section, clause or provision of this act should be held invalid, it shall not affect the remaining portions not so held invalid.

Section 7. This act shall take effect immediately upon its passage and approval by the Governor.

Approved April 21, 1936.

[fols. 38-38-1] EXHIBIT "C" TO COMPLAINT

Each Probate Judge, Sheriff, Clerk and Register of the Circuit Court is required by law to preserve this Act in a book kept for that purpose in his office for the information of the public until Acts are published in a permanent form and shall be open to inspection at all reasonable hours of the day.

Alabama General Laws

(Extraordinary Session, 1936)

No. 194.) (S. 125—Stephens.

AN ACT

To amend an Act approved September 14, 1935, entitled "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefit; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled. "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes"; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other States or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act. This Act being approved September 14, 1935.

Be it enacted by the Legislature of the State of Alabama:

That Section 2 (g) be amended so as to read as follows: Section 2 (g) "Employment" means any employment in

which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to: (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed as an officer Bar Pilot or [fol. 38-2] member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States; (6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as Solicitors or agents for Insurance Companies. (7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions; (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"That Section 2 (q), Section 2 (r), Section 4 (d), and Section 5 (d), of "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefit; to provide for

the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes"; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act" be and the same is hereby amended so that the said Sections 2 (q), 2 (r), 4 (d) and Section 5 (d) shall read as follows: Section 2 (q). "Weeks" means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission. [fol. 38-3] (Section 2 (r). "Week of employment" means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to this Act, and was not partially unemployed as defined in Section 2 (k). Section 4 (d). "Contributions by Employees". Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules. Section 5 (d). One-to-Four Ratio of Benefits to Employment. The aggregate amount of benefits an employee may at any time receive shall be limited by

the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employees most recent week of employment.

Approved April 21, 1936.

[fol. 38-4] EXHIBIT "D" TO COMPLAINT

Each Probate Judge, Sheriff, Clerk and Register of the Circuit Court is required by law to preserve this Act in a book kept for that purpose in his office for the information of the public until Acts are published in a permanent form and shall be open to inspection at all reasonable hours of the day.

Alabama General Laws

(Extraordinary Session, 1936)

No. 195.) (S. 126—Stephens.

AN ACT

To amend Section 18 of an Act approved September 14, 1935, and entitled "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled "An Act to provide for the establishment of a national

employment system and for cooperation with the states in the promotion of such system and for other purposes''; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act, to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act.''

Be it enacted by the Legislature of Alabama:

That Section 18 of an Act approved September 14, 1935, and entitled ''An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled ''An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes''; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the [fol. 38-5] Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act'', be and the same is hereby amended so as to read as follows:

Section 18. Saving Clause.—The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. It is expressly provided that in the event the Supreme Court of the United States shall hold the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or payroll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Approved April 21, 1936.

[fols. 39–39-1] EXHIBIT "E" TO COMPLAINT

Information and Instructions No. 1 on the State Unemployment Compensation Law from the Unemployment Compensation Commission of Alabama to all Employers of Employees in the State of Alabama.

[Alabama Great Seal.]

Unemployment Compensation Commission

Montgomery, Alabama

[fol. 39-2] The reporting requirements of the law (Sec. 10-g) apply to any employer who employed one or more persons in 1935 or any year thereafter. Every employer Regardless of Whether He Deems Himself Subject to the Contribution Provisions of the Law must prepare and submit a report on the enclosed form on or before the expiration of ten days from the date of receipt.

The Purpose of the Accompanying Report Form is to secure information from which the Unemployment Compensation Commission will determine your status under the contribution provisions of the law for the calendar year beginning January 1, 1936. However, When an Employer Is in Fact Subject to the Contribution Provisions of the

Law by Reason of Employment Performed for Him, Failure to Receive this Reporting Form Does Not Affect His Status or Postpone His Liability to Make Required Contributions.

Employers Subject to Contribution Provisions.—The contribution provisions will apply starting Jannary 1, 1936, to all employers who (or whose predecessor in interest) employed at least eight persons, in employment subject to this Act, within each of 20 or more calendar weeks of 1935 (Sec. 2 (f) of the Act).

1. The term "employer" includes persons, partnerships, associations, corporations (whether domestic or foreign), [fol. 39-3] legal representatives, receivers, trustees.

2. The eight persons in any employment subject to this Act need not have been the same persons from week to week. Any calendar week in which the employer had eight employees (Eg., two on Monday, two different other persons on Tuesday, and four other persons on Wednesday) will be counted as one of the 20 weeks.

3. The 20 weeks need not be consecutive but may be any 20 weeks in the calendar year regardless of their order.

Affiliated Employers.—In determining whether an employer of any person in Alabama employs enough persons to be subject to the law, and in determining with respect to what persons such employer is liable for contributions, all persons employed within Alabama by such employer in any of his several places of employment maintained within the state shall be treated as employed by a single "employer"; provided, moreover, that where any employer, either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single employer for the purpose of coverage and contribution.

Employees of Independent Contractor.—In determining status (and contributions) an employer (of any person) shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work. However, when any such contractor or subcontractor elects to become fully subject to the Alabama

Unemployment Compensation Law, and agrees with the employer to accept exclusive liability for contributions on account of all persons employed by him on the employer's work, the employer is relieved of this liability.

Such voluntary election and agreement to accept exclusive liability must be in a form approved by the Commission. [fol. 39-4] When the transfer of contribution liability has been approved by the Commission, the employer is to take no account of the employees of a contractor in determining his (employer's) status, or in making his contributions.

Employment Under the Act.—To constitute an employment within the meaning of the Act, services must be performed pursuant to a contract of hire. The contract may be oral or written, expressed or implied, and may be established on constructive notice to the employer. Employment under the Act arises from services performed in the legal relationship of employer and employee (master and servant). An exact definition of this relationship cannot here be given. Whether the relationship actually exists will be a question of the particular facts in each case as interpreted by established law.

An "employee" under a contract of hire can only be an individual, while an "employer" may be a person, partnership, corporation, etc.

An employee performing some service outside of Alabama is, nevertheless, subject to the Act when the greater part of his services on behalf of his employer are customarily performed within this state.

The term "employment" shall not, however, apply to certain contract-of-hire services set out in Section 2(g) (1-6) of the law. These exclusion provisions of the law, and the interpretive rules of the Unemployment Compensation Commission, where such are necessary, are set out as follows:

Section 2-g: "The term 'employment' shall not apply to:

(1) "Agricultural labor:"

Rule 1. The term "agricultural labor" includes all services performed by an employee in connection with:

(a) The cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock and poultry; or

[fol. 39-5] (b) The processing on the farm of articles from such materials, only, as in their raw or natural state are

produced on that farm, also the packing or packaging thereon and transportation therefrom, and the marketing, of those raw materials or articles. Such services do not constitute "agricultural labor", however, unless they are performed by an employee of the owner or tenant of the farm, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit and truck farms, plantations, ranches, and orchards.

Forestry or lumbering is not included in the exception.

(2) "Domestic service in a private home;"

Rule 2. Domestic Service.—A person who performs service of a household nature, in or about the private home of his employer, is engaged in domestic service within the meaning of the Act. However, services usual to a household shall not be deemed within the exclusion if performed in or about hospitals, apartments, rooming or lodging houses, fraternity houses, private schools, clubs, hotels, or any similar establishment.

(3) "Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;"

Rule 3. Maritime Service.—The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual subject to his authority serving on board, and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks,

clerks, carpenters, deck hands, porters, chambermaids, and fishermen, oystermen and shrimpers on vessels.
[fol. 39-6] Services of longshoremen and others who work in connection with loading or unloading vessels, are not within the excepted class.

(4) "Services performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;"

Rule 4. Family exclusions from the provisions of the law are specifically limited to those family relationships enumerated in Section 2-g (4).

(5) "Service performed in the employ of the United States Government or of an instrumentality of the United States:"

(6) "Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;"

Rule 5. Government Employees.—This exclusion extends to every service performed by an individual in the employ of the United States, the States, the District of Columbia, Alaska, or Hawaii, or any political subdivision or instrumentality thereof, including every unit or agency of government without distinction between those exercising functions of a governmental nature, and those exercising functions of a proprietary nature.
Services performed by employees of National Banks and Federal Reserve Banks are within the exception.

(7) "Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Rule 6. Services performed for non-profit institutions devoted to certain purposes are excluded from defined employment by Sec. 2-g (7) of the Act. To qualify for the exemption therein specified, an organization must establish

with the Commission its right to exclusion. In all cases, to establish its status, the organization must meet two tests;

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure, in whole or in part, to the benefit of private shareholders or individuals.

[fol. 39-7] These tests are similar to those applied by the Bureau of Internal Revenue to organizations claiming exemption from the Federal Income Tax law. In interpreting employer status, the Commission will be guided by the interpretations of that Bureau, insofar as they are not inconsistent with the laws of Alabama. If a copy of a ruling from the Bureau of Internal Revenue exempting an organization from Federal Income Tax liability does not accompany its claim for exclusion submitted to the Alabama Unemployment Compensation Commission, such claim must be supported by a certified copy of the Articles of Incorporation (or Association) and an affidavit disclosing;

(1) Sources of income.

(2) An operating statement and financial statement covering the most recently completed fiscal year.

(3) The actual activities (as distinct from purposes as set out in the Articles of Incorporation)

(4) If a hospital, whether non-pay patients are accepted, with relative number of pay and non-pay patients, or such accounts as would disclose the relation.

When an organization has established its status with the Commission, it need not thereafter make any further report unless it changes the character of its organization or the purposes of its operation. The Commission, however, may inquire into its status, and ascertain whether it is observing the conditions upon which its classification is predicated.

Service Not Performed for Hire.—Only services performed pursuant to a contract of hire (employer-employee) relationship are within an "employment." Hence, compensation for services performed by proprietors, partners, and

directors of associations or corporations, active only in official capacity, and compensation to independent contractors, is not subject to the contribution provisions of the Law.

Rule 7. Directors of an association or corporation who perform no duties other than periodic attendance at directors' meetings, and receive only customary and reasonable directors' fees, are not employees, and such reasonable directors' fees may be excluded from the employer's "defined payroll" for contribution purposes.

[fol. 39-8] Rule 8. (A) Independent Contractor.—A person himself performing services pursuant to a contract which does not establish an employer-employee (master-servant) relationship is not in "employment" within the meaning of the Alabama Unemployment Compensation Act. The Commission will endeavor to interpret and apply the governing principles of the Alabama law to all claims that an employer-employee (master-servant) relation does not exist with respect to the services of a particular individual. Such claims must, in every instance, be supported by a full statement of all relevant facts from the reporting employer.

(B) Independent Contractor With Employees.—Where an employer contracts for work to be performed in the usual trade, occupation, profession or business of the employer, the employees of the contractor are deemed to be the employees of the employer, unless and until the independent contractor himself accepts exclusive liability for contributions on behalf of his own employees. The employer may enter into an agreement divesting himself of his liability under the law only with such contractors as are subject or have elected to become subject to the contribution provision of the law. The Commission prescribes an independent contractor not already subject, shall establish such election by serving written notice upon the Commission that he elects to become fully subject to the provisions of the Alabama Unemployment Compensation Law for not less than two calendar years. (Sec. 2-f). Such written notice must include detailed data sufficient to justify the Commission in granting the application. With such contractors, an employer may enter into an agreement, as part of his contract, which shall provide (1) for the certificate of the contractor that he has established his election with the Commission (citing date) and (2) the agreement of the

contractor to accept exclusive liability for contributions in behalf of all his employees who are engaged on any work, under the contract, which is part of the employer's usual trade, occupation, profession, or business.

What constitutes employment within the usual trade, occupation, profession or business is a matter for determination by the Commission from the particular facts in each case, to be presented to the Commission by the employer. Before an employer may claim exemption of an independent contractor with employees because such contractor is not engaged in the business of the employer, he must se- [fol. 39-9] cure a finding from the Commission to such effect. Usual trade, occupation, profession or business will not generally include maintenance and construction work by independent contractors, when such is not the type of enterprise of the employer, nor any task in which the employer himself does not have employees similarly engaged.

Preparation of Forms.—The attached forms for Employer's Report to the Unemployment Compensation Commission are to be submitted pursuant to the foregoing information and the following instructions:

A. Answers to questions set forth under ("A—General Information, No.-1") are required of all employers.

B. If reporting employer acknowledges he is subject to the Contribution provisions of the Unemployment Compensation Law in certificate provided under "A—General Information No.-1" he need not fill in "B—Weekly Record" on reverse side of Form.

1. In Column A of Weekly Record for 1935 enter total number of persons who performed any service in employer's business in each of the fifty-two weeks of 1935. The entry should include all persons, regardless of nature of service, of time worked, and of money earned, and not merely those that come within the definition of "employees." The test is, were services performed by individuals set out in column A. The time or period of payment for services thus rendered—i. e. Weekly, semi-monthly, or monthly—is immaterial.

2. Columns B, C, D, E, are for the indication of particular classes of exemption claims. These claims run to individuals, included in the total number set out in Column A, who did not

(a) Perform services on a contract of hire basis or

(b) Are specifically excluded by the exceptions from "defined employment" set out in Section 2(g) (1-6) of the Act.

Exclusion claims, as set out in the exclusion column, must be substantiated in the following manner:

Column B—Proprietors, partners, and any person, for whom claim under Rule 7 is made. A signed letter prepared [fol. 39-10] by the employer specifying whether claims run to proprietors, partners, or directors, in official capacity only. If directors, indicate number of meetings per year, specify that attendance at such meetings are the only duties performed, and set out compensation received for attendance.

Column C—Total individuals (without employees) paid for services performed as independent contractors not under contracts of hire (See Paragraph A of Rule 8, foregoing information, before entering claims). Specify in detail in letter the nature of services performed, making a particular showing with regard to;

(1) Nature and degree of control over the activities of the person performing the services permitted the employer by the express or implied terms of the contract.
(2) The basis of compensation.
(3) Time duration of the contract.
(4) Ownership of tools and machines used in performance of the task.
(5) Termination provisions, if any, of contract.
(6) Whether person performing is covered by employer under the Workmen's Compensation Act.

Column D—Total agricultural workers (See Rule 1, foregoing information, before entering exclusion claims). In an accompanying letter to the Unemployment Compensation Commission, the employer should certify with respect to exclusions claimed in Column D that he has read Rule 1 in Information, and it fully applies to all persons claimed excluded.

Column E—Total employees having family relation to reporting employer, (See Rule 4 foregoing Information before entering exclusion claims). Specify in letter to Commission, with respect to Column E exclusions, the nature

of the family relationship, and where children are involved, give their ages.

Column F—All exclusions claimed, not otherwise provided for in Columns B. C. D. & E. of the report, should be set out, with an accompanying signed letter to the Commission as to the basis of the claim. The letter should contain all relevant information.

After appropriate entries have been made in each of the weekly horizontal columns, in accordance with the above procedure, subtract from each weekly total shown in Column A the sum of the exclusions claimed for that week in Columns B-F inclusive and set down the net total in Col- [fol. 39-11] umn G. If there are 20 entries in Column G showing 8 or more in employment, the Reporting Employer is subject to the contribution provisions of the Act starting January 1, 1936 on the basis of his 1935 employment.

Notice to All Employers.—The Act provides (Section 10-g) that "Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of weekly hours worked for him by each, and of weekly wages paid by him to each such person." These records are open to inspection by the Commission.

Every employer should make provisions at once for compliance with the above requirement.

NOTE.—As additional Rules are adopted by the Commission they will be made public and copies will be forwarded to subject employers.

[fols. 40–40-1] EXHIBIT "E-1" TO COMPLAINT

Supplement No. 1 to Information and Instructions No. 1

Alabama Unemployment Compensation Law

Amendments to State Law Exempting Certain Railroad Employees and Insurance Agents and Solicitors (Section 2 (g)

8. "Service performed in the employ of a carrier engaged in interstate commerce, and subject to the Act of Congress,

known as the Railway Labor Act, as amended or as hereafter amended."

The test of the exception is not the nature of the services performed by an employee, but is: (1) whether the carrier-employer is engaged in interstate commerce, and, (2) is subject to the Railway Labor Act. An employee might be a clerk working in an office and never leave the state wherein he works. If he performs services for a carrier engaged in interstate commerce and subject to the Railroad Labor Act, he performs exempted services. Under this exception it is apparent that employees of a railroad can be exempted. It is obvious that carriers engaged in interstate commerce, other than railroads, are not subject to the Railway Labor Act. Thus, services performed for buses and bus lines engaged in interstate commerce are not exempted.

Contributions.—A subject-employer, engaged in interstate commerce and subject to the Act of Congress, known as the "Railway Labor Act," shall be liable for contributions based on wages paid by him for services performed for him from January 1, 1936, through April 20, 1936. Beginning April 21, 1936, the amendment excepting services performed for such employer is effective.

9. "Services performed by those engaged as solicitors or agents for Insurance Companies".

Here, the test is not the nature of the employer's business, but is the nature of the services performed. Thus, services performed as solicitors or agents are exempted.

The names of all agents or solicitors for whom exemptions are claimed must be furnished by the employer to the Com- [fol. 40-2] mission either; (1) at the time of filing Status Report 1, (See instructions regarding "Column F" page 11), or thereafter, (2) at the time the next succeeding report is made to the Commission after the hiring of an agent or solicitor.

The following rules govern services rendered to insurance companies, other than services performed by those engaged as agents or solicitors:

(a) Insurance brokers placing insurance with more than one company or engaging in the sale of diversified lines of insurance are deemed independent contractors, on account of whose compensation no contributions are payable under this Act.

(b) Salaried managers of general and branch offices are not deemed independent contractors insofar as their managerial duties and wages are concerned, and contributions shall be paid, based on the wages received by such managers for their managerial duties.

(c) All other employees are "subject" employees.

Contributions.—A subject-employer shall be liable for contributions based on wages paid by him from January 1, 1936, through April 20, 1936, for services performed for him by those engaged as solicitors or agents (except independent contractors) for insurance companies. Beginning April 21, 1936, the amendment excepts services performed by such persons.

[fols. 41–41-1] EXHIBIT "E-2" TO COMPLAINT

Rules and Regulations Relating to the Unemployment Compensation Law of the State of Alabama

[fol. 41-2]

Article 1

Definitions

The following words as used in these Rules and Regulations shall have the following meaning:

100. "The Act" shall refer to and mean the Alabama Unemployment Compensation Law, approved and effective September 14, 1935, as amended April 21, 1936.

101. "Commission" means the Unemployment Compensation Commission established by the Act, or its authorized representative.

102. "Contributions" means the money payments to the Alabama Unemployment Compensation Fund required by the Act.

103. "Fund" means the Unemployment Compensation Fund established by the Act, to which all contributions and from which all benefits are required under the Act.

104. "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof; or the legal representative of a deceased

person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to the Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs.

105. "Employee" shall mean any person employed by an employer subject to the Act and in employment subject to the Act.

[fol. 41-3] 106. "Employment" means any employment excepting certain employment set forth in Section 2-g of the Act in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia).

[fol. 41-4]

Article II

Miscellaneous

Registration of Employers:

200. Every employer of one or more persons, regardless of the number of persons or workers in his employ, or whether exemption is claimed from the provisions of the Act, shall report on forms prescribed and furnished by the Commission and identified as Form SR-1 (Status Report 1).

201. When an employer is in fact subject to the contribution provisions of the law by reason of employment performed for him, failure to receive the reporting form will not affect his status or postpone his liability to make required contributions.

Securing Commission Rulings:

202. Individual companies or individuals affected by the law, are requested to use the following procedure:

Brief the matter, giving all details, and stating the specific question upon which a ruling is desired, and giving a reason therefor.

All requests for information should be forwarded to Hon. J. L. Kaufman, Chairman, Unemployment Compensation Commission, State Capitol, Montgomery, Alabama.

Bankruptcy, Dissolution, etc.:

203. In the event of an employer's dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for the benefit of creditors, judicially confirmed extension proposal or extension, or any analogous situation, contribution payments then or thereafter due under the Act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but the lien of any judgment entered upon any reward shall not be impaired. Employers shall immediately notify the Commission in the event of dissolution, insolvency, bankruptcy, composition, or assignment for the benefit of creditors.

Penalties:

204. Penalties are provided in the Act for the following offenses:

[fol. 41-5] A penalty of twenty to fifty dollars, or imprisonment in the county jail for not more than thirty days or both, for whoever makes a false statement or representation to obtain or increase any benefit or other payment, either for himself, or for any other person.

A penalty of not less than twenty and not more than two hundred dollars, or imprisonment in the county jail for not longer than sixty days, or both, for any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject to the Act or to avoid or reduce any contribution or other payment required of such employer under the Act, or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports required of him, or to appear and testify or produce records as lawfully required, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to waive any right under the Act.

A penalty of not less than twenty and not more than fifty dollars, or imprisonment in the county jail for not more than thirty days, or both, for any commission employee who reveals any information, obtained by him from any employer's records, while in the performance of his official duties.

Collections of Fines and Penalties:

205. On complaint of the Commission the fines specified or provided in this article may be collected by the State in an action of debt. All fines thus collected shall be paid to the Unemployment Administration Fund.

General Administration:

206. The offices of the Alabama Unemployment Compensation Commission will be open for business from 8:30 A. M. until 5:00 o'clock P. M. on all week days, except legal holidays, and Saturdays. On Saturdays the office hours will be from 8:30 o'clock A. M. until 12:00 o'clock noon.

207. Transmitting envelopes, bearing required documents, remittances, or reports must bear a postmark of not later than midnight of the day specified in order not to be considered delinquent.

[fol. 41-6] 208. All checks or money orders intended for the Commission shall be made payable to the "Alabama Unemployment Compensation Commission".

Effect of Pension Plans or Workmen's Compensation Laws:

209. The obligation of any employer under the provisions of the Act shall not be affected by any other Unemployment Compensation Insurance or Pension Plan or by any other similar plan.

Garnishment and Assignment of Benefits:

210. Benefits which are due or may become due under the Act shall not be assignable before payment; and when awarded, adjudged, or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

Waiver of Rights:

211. No agreement by an employee to waive or assign his right to benefits or any other right under the Act shall be valid.

212. No agreement by an employee to pay all or any portion of the contributions required under the Act from employers shall be valid.

213. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights set forth in the Unemployment Compensation Law.

Future Regulations:

214. Rules and Regulations dealing with other portions of the Act, as well as the portions already covered, will be issued in due time.

Benefits, Appeals, etc.:

215. Inasmuch as benefits will not be payable until January 1, 1938, and inasmuch as questions concerning benefit credits will not arise until after January 1, 1937, rules and regulations concerning the same are not made at this time. They will be made in ample time, and full publicity given them.

[fol. 41-7]

Article III

Employer

300. "Employer" under the Act includes the following types of employing units; a person, a partnership, an association, corporation, either domestic or foreign, or the legal representative, trustee in bankruptcy, receiver or trustee thereof, or the legal representative of a deceased person.

Affiliated Employers:

301. In determining whether an employer in Alabama employs enough persons to be subject to the Act for contributions, and in determining with respect to what persons such employer is liable for contributions, all persons employed in Alabama by such employer in all of his several places of employment maintained within the State shall be treated as employed by a single "employer".

302. Where an employer of any person either directly or through a holding company or otherwise has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single employer for the purpose of coverage and contribution.

Employers Subject for Contribution:

303. An employer is subject to the Act for contribution from January 1, 1936, if he or his agent or predecessor in interest employed at least eight (8) persons in employment subject to the Act within each of some twenty or more weeks during the year 1935. The eight persons in any employment subject to the Act need not have been the same persons from week to week. Any calendar week in which the employer had eight or more employees (example: two on Monday, two different persons on Tuesday, and four other persons on Wednesday) will be counted as one of the twenty weeks. The twenty weeks need not be consecutive, but may be any twenty weeks in the calendar year, regardless of their order.

304. In any year subsequent to 1935, such employment during that year as is set out in Section 303 of this Article shall make an employer subject to the Act for contributions and for all purposes as of January first of the calendar year in which such employment occurs.

[fol. 41-8] Employees of Subcontractor:

305. In determining liability for contributions an employer (of any person) shall, whenever he contracts with any contractor or subcontractor for any work, which is part of his (the employer's) usual trade, occupation, profession or business, be deemed to employ all persons employed by such contractor or subcontractor on such work. However, when any such contractor or subcontractor elects to beome fully subject to the Alabama Unemployment Compensation Law, and agrees in writing with the employer to accept exclusive liability for contributions on account of all persons employed by him on the employer's work, the employer is relieved of liability for contributions on account of such persons.

Such voluntary election and agreement to accept exclusive liability must be in a form approved by the Commission.

When the transfer of contribution liability has been approved by the Commission, the employer is to take no account of the employees of a contractor or subcontractor in making his contributions.

306. Irrespective of whether or not a contractor or subcontractor is himself subject to the provisions of the Act and of whether or not he has agreed to accept exclusive liability for the payment of contributions, in determining whether or not any person or concern is an employer as defined in Section 2-f of the Act, such person or concern, whenever he contracts with any contractor or subcontractor for any work which is part of the usual trade, occupation, profession or business of such person or concern, shall be deemed to employ all persons employed by such contractor or subcontractor on such work, and, in computing the number of employees of such person or concern during any week, there shall be included, in addition to the employees of such person or concern during such week, the employees of such contractor or subcontractor who perform such work during such week period. Any provision of the rules or instructions heretofore issued by the Commission, inconsistent with the foregoing rule, is hereby repealed.

NOTE.—The next preceding paragraph amends Information and Instructions No. 1, Employees of Independent Contractor, page 5, lines 1 through 6.

A form of acceptance of exclusive liability, satisfactory to the Commission, will be forwarded upon request.

[fol. 41-9] Minors and Aliens as Employers:

307. The Act applies to minors as well as to adults who are employers. It also applies to aliens, who are employers.

Non-Resident Employers:

308. The Act applies to resident and non-resident employers alike, so long as the employees customarily perform all or the greater part of their work (within the continental United States) within the State of Alabama.

Employee as an Employer:

309. A person may be the employer of persons, and the employee of another.

Sole Proprietors:

310. When an employer is organized as an individually conducted business (as distinct from a partnership, association, or corporation) the sole owner (Proprietor) of such individual business shall be considered to be the "employer", and shall not be deemed in "employment" for the purposes of the Act.

Partners:

311. Where an employer is organized as a partnership, the bona fide partners shall with respect to such enterprise be treated as "employers" rather than "employees", and bona fide partners are not to be considered as in employment for the purpose of the Act.

Employer Ceasing to be Subject to the Act:

312. Any employer subject to the Act shall cease to be subject to the same only upon a written application by him, and after a finding by the Commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject to the Act. The words "after a finding by the Commission" simply mean that until the Commission ascertains it to be a fact that the employer has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject to the Act, such employer remains subject to the Act.

[fol. 41-10] Employer Electing to Become Subject to the Act:

313. Any employer (of any person or any number of persons within the State) not otherwise subject to the Act upon the filing by such employer with the Commission his election to become fully subject hereto for not less than two calendar years, shall become subject hereto. This election is subject to the approval of the Commission, but the Commission will approve all elections except for good cause.

Any form of election if sufficient, will be accepted. If request is made to the Commission a form approved by the Commission will be forwarded.

[fol. 41-11] Article IV

Employee

Contract of Hire:

400. The Act uses the term "contract of hire" in connection with an employee's work. This is a legal term, which describes the relationship ordinarily called by the law "master and servant". Therefore, the ordinary rules of law relative to "master and servant" will apply to questions as to who are "employees" under the Act.

Who are Employees:

401. Under Section 2 (e) of the Act "employee" is defined to be "any person employed by an employer subject to the Act and in employment subject to the Act". "In employment subject to the Act" simply means that a person does work, under a contract of hire, the greater part or all of which work is customarily performed within this State, and the nature of which work is not exempted by the Act. And a person, firm, corporation, etc., is subject to the Act, generally speaking, if within each of twenty weeks during the current or preceding year he or it employed at least eight persons to do work under contracts of hire, the greater part or all of which work was customarily performed within the State.

Independent Contractors:

402. A person himself performing services pursuant to a contract which does not establish an employer-employee (master and servant) relationship is not "in employment" within the meaning of the Alabama Unemployment Compensation Act. The Commission will endeavor to interpret and apply the governing principles of the Alabama law to all claims that an employer-employee (master and servant) relation does not exist with respect to the services of a particular individual. Such claims must, in every instance, be supported by a full statement of all relevant facts from the reporting employer.

What Constitutes an Independent Contractor:

403. There is no hard and fast rule as to what constitutes an independent contractor. Each case must depend on its

own facts. Generally, when the employer retains the right to direct the manner in which a thing is to be done, as well [fol. 41-12] as the result to be accomplished, the relationship is that of employer-employee. It is not necessary that the employer actually direct the manner, but it is sufficient if he retains the right to do so. Where the employer has the right to direct not only what shall be done, but also how it shall be done, then the relationship is that of employer-employee and not that of independent contractor.

Independent or Subcontractor With Employees.

404. Where an employer of any person contracts for work to be performed in the usual trade, occupation, profession or business of the employer, the employees of the contractor are deemed to be the employees of the employer, unless and until the independent contractor himself accepts exclusive liability for contributions on behalf of his own employees. The employer may enter into an agreement divesting himself of his liability under the law only with such contractors as are subject or have elected to become subject to the contribution provision of the law. A contractor or sub-contractor not subject to the Act may elect to become subject thereto by filing written notice of such election with the Commission. Such election must be for a period of not less than two calendar years (Section 2-f of the Act). Such a written application to the Commission shall be upon the form prescribed by the Commission and shall be effective only when the Commission has approved such application and notified the applicant. With such contractors, an employer may enter into an agreement, as part of his contract, which shall provide (1) for the certificate of the contractor that he has established his election with the Commission (citing date) and (2) the agreement of the contractor to accept exclusive liability for contributions in behalf of all his employees who are engaged on any work, under the contract.

405. What constitutes employment within the usual trade, occupation, profession or business is a matter for determination by the Commission from the particular facts in each case, to be presented to the Commission by the employer. Before an employer may claim exemption of an independent contractor with employees because such con-

tractor is not engaged in the business of the employer, he must secure a finding from the Commission to such effect. Usual trade, occupation, profession or business will not generally include maintenance and construction work by independent contractors, when such is not the type of enterprise of the employer, nor any task in which the employer himself does not have employees similarly engaged.

[fol. 41-13] Newsboys and Distributors:

406. Newsboys and distributing carriers of newspapers are deemed independent contractors, and as such are not liable as employees under the Act for payment of contribution upon their earnings.

Employment by Assistants and Other Employees:

407. Where an employee such as a manager of a branch store employs helpers, errand boys, etc., they become the employees of the principal employer, and contribution must be paid upon their wages.

Barbers:

408. Barbers, working strictly on a commission basis, furnishing their own instruments, etc., but using the employer's chairs and sanitary equipment are not independent contractors, but are employees, on account of whose wages contributions are payable.

Directors of Corporations:

409. Directors of an association or corporation who perform no duties other than periodic attendance at directors' meetings, and receive only customary and reasonable directors' fees, are not employees, and such reasonable directors' fees may be excluded from the employer's "defined payroll" for contribution purposes. Corporations claiming exemption for directors' fees are required to furnish the Commission with a detailed statement showing number of meetings of the Board of Directors in the year 1935, together with number of Directors that year, and fees received by each, as well as complete data on the duties performed by each director.

Officers of a Company or Corporation:

410. If officers of a company or corporation perform services for such company or corporation under any contract of hire, they are employees.

Casual Labor:

411. Labor is casual if it is occasional, incidental and occurs irregularly. It may be in the course of the employer's business or not. In either event employees performing such casual labor under a contract of hire are under the Act, and contributions must be made on their wages.

[fol. 41-14] Physicians, Lawyers:

412. Physicians, lawyers, dentists, veterinarians, public stenographers, auctioneers, and other individuals, firms or associations who follow a regular and distinct trade, business or profession in the course of which they offer their services to the public to be performed independently of the control of the employer, are independent contractors. Such persons as are herein set out who perform paid services and are on a salary basis, are not deemed independent contractors insofar as such services are concerned.

Purchase of Finished Products:

413. Where a person, firm, corporation, etc., bona fide contracts for the purchase of finished products and does not have the right to control, and does not actually control the manner and method of creating the finished product, and does not actually hire and discharge the persons creating the finished products, contracting to pay a specified amount of money for delivery of the finished product, a relationship of employer-employee does not exist between the parties to such contract of purchase. Neither are the employees of the person, etc., furnishing the finished product considered as the employees of the purchaser.

Example: Where a railroad or mining company contracts for the purchase and delivery of cross-ties or lumber, the same to be according to certain specifications.

Rehabilitation Workers for Independent Contractors:

414. Rehabilitation workers in the employ of independent contractors, even though government contractual provisions require the employment of such people, are not excluded from contributions to the fund. The service they render is not "performed in the employ of the United States Government or of any instrumentality of the United States".

Water-Front Activities:

415. Services performed in and about water-front activities are not excluded from the operation of the Act, unless such services are performed as an officer or member of a crew of a vessel on the navigable waters of the United States. Thus, stevedore services, services performed in loading and unloading ships are within the Act. Ship repairing, unless done in the course of his usual employment by a member of the crew of the vessel repaired, is within the Act.

[fol. 41-15] Local Concerns With Workers Performing All of Their Service Out of the State, and No Workers Within This State:

416. Local concerns which hire workers all of whom customarily perform all or the greater portion of their services outside of the State of Alabama do not make contributions to the Alabama Unemployment Compensation Fund.

Interstate Services:

417. No person required to make payments under the Act shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, except as is set out in Section 509 of these Rules and Regulations, (Example, railroad employees).

Extra Help:

418. Extra workers employed only on Saturday or during rush seasons shall be counted in determining whether an employing unit had in its employ eight or more persons during each of twenty weeks of a calendar year. Contributions must be paid, based on wages payable to such workers.

[fol. 41-16] Article V

Employment

"Employment Under the Act" or "Defined Employment":

500. "Employment under the Act" or "Defined Employment", with certain exceptions set forth in amended Section 2-g means (Section 2-g of the Act) "any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia)".

Place Where Contract Entered Into:

501. The place where the contract for services is entered into, and the citizenship or residence of the employee or the person who employs him are immaterial. Thus, the employee and the person who employs him may be citizens and/or residents of a foreign country, and yet, if the employee under such contract actually performs all or the greater part of his services within this state, there is to that extent an "employment" within the meaning of the Act.

Employees Performing Services Excepted From the Act:

502. Even though the services of the employee are performed within the State of Alabama, if they are in employment excluded from coverage by the provisions of Section 2 (g), Sub-sections 1 to 8, both inclusive, of the Act, they are excluded for the purpose of (1) determining whether a person employs sufficient number of individuals to be an employer subject to the Act, and (2) of computing the total wages payable with respect to employment during the calendar year.

Excepted Employment

The Term "Employment" (Section 2-g of the Act) Shall Not Apply to:

Agricultural Labor:

503. The term "agricultural labor" includes all services performed by an employee in connection with:

[fol. 41-17] (a) The cultivation of soil, the harvesting of crops, or the raising, feeding, or management of livestock and poultry; or

(b) The processing on the farm of articles from such materials, only, as in their raw or natural state are produced on that farm, also the packing or packaging thereon and transportation therefrom, and the marketing, of those raw materials or articles. Such services do not constitute "agricultural labor", however, unless they are performed by an employee of the owner or tenant of the farm, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit and truck farms, plantations, ranches, and orchards.

Forestry or lumbering is not included in the exception.

Domestic Service in a Private Home:

504. A person who performs service of a household nature, in or about the private home of his employer, is engaged in domestic service within the meaning of the Act. However, services usual to a household shall not be deemed within the exclusion if performed in or about hospitals, apartments, rooming or lodging houses, fraternity houses, private schools, clubs, hotels, or any similar establishment.

A private home is the fixed place of abode of an individual or family. In general, services of a household nature in and about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen,

gardeners, footmen, grooms and chauffeurs of automobiles for family use.

Services Performed as a Bar Pilot or as an Officer or Member of the Crew of a Vessel on the Navigable Waters of the United States:

505. The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign coun- [fol. 41-18] tries or among the States. The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" indicates the master or officer in charge of the vessel, however designated, and every individual subject to his authority serving on board, and contributing in any way to the operation and welfare of the vessel. The exception extends for example, to service rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, chambermaids, and fishermen, oystermen and shrimpers on vessels. Services of longshoremen and others who work in connection with loading or unloading vessels, are not within the excepted class.

Services Performed by an Individual in the Employ of His Son, Daughter, or Spouse, and Services Performed by a Child Under the Age of Twenty-One Years in the Employ of His Father or Mother:

506. Family exclusions from the provisions of the law are specifically limited to those family relationships enumerated in Section 2-g (4) of the Act.

Government Employees:

507. This exclusion extends to every service performed by an individual in the employ of the United States, the several States, the District of Columbia, Alaska, or Hawaii, or any political subdivision or instrumentality thereof (counties, cities, towns, etc.); including every unit or agency

of government without distinction between those exercising functions of a governmental nature, and those exercising functions of a proprietary nature.

Services performed by employees of National Banks and Federal Reserve Banks are within the exception. State Banks that are members of the Federal Reserve System do not come within this exception.

Service Performed in the Employ of a Corporation, Community Chest, Fund, or Foundation, Organized and Operated Exclusively for Religious, Charitable, Scientific, Literary, or Educational Purposes, or for the Prevention of Cruelty to Children or Animals, no Part of the Net Earnings of Which Inures to the Benefit of Any Private Shareholder or Individual:

508. Services performed for non-profit institutions devoted to certain purposes are excluded from defined em- [fol. 41-19] ployment by Section 2-g (7) of the Act. To qualify for the exemption therein specified, an organization must establish with the Commission its right to exclusion. In all cases, to establish its status, the organization must meet two tests:

It must be organized and operated exclusively for one or more of the specified purposes; and

Its net income must not inure, in whole or in part, to the benefit of private shareholders or individuals.

These tests are similar to those applied by the Bureau of Internal Revenue to organizations claiming exemptions from the Federal Income Tax law. In interpreting employer status, the Commission will be guided by the interpretations of that Bureau, insofar as they are not inconsistent with the laws of Alabama. If a copy of a ruling from the Bureau of Internal Revenue exempting the organization from Federal Income Tax liability does not accompany its claim for exclusion submitted to the Alabama Unemployment Compensation Commission, such claim must be supported by a certified copy of the Articles of Incorporation (or Association) and an affidavit disclosing:

Sources of income.

An operating statement and financial statement covering the most recently completed fiscal year.

The actual activities (as distinct from purposes as set out in the Articles of Incorporation).

If a hospital, whether non-pay patients are accepted, with relative number of pay and non-pay patients; or such accounts as would disclose the relation.

When an organization has established its status with the Commission, it need not thereafter make any further report unless it changes the character of its organization or the purposes of its operation. The Commission however, may inquire into its status, and ascertain whether it is observing the conditions upon which its classification is predicated.

Service Performed in the Employ of a Carrier Engaged in Interstate Commerce and Subject to the Act of Congress Known as the Railway Labor Act:

509. Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of [fol. 41-20] Congress known as the Railway Labor Act, as amended or as hereafter amended, is excepted from the Act from and after April 21, 1936. The test of the exception is not the nature of the services performed by an employee, but is (1) Whether the carrier-employer is engaged in interstate commerce and (2) Is subject to the Railway Labor Act. It is obvious that carriers engaged in interstate commerce, other than railroads, are not subject to the Railway Labor Act. Thus services performed for buses and bus lines engaged in interstate commerce are not exempted.

Service Performed by Those Engaged as Solicitors or Agents for Insurance Companies:

510. Service performed by those engaged as solicitors or agents for insurance companies. Here, there are two tests. They are: (1) the service must be performed for an insurance company, and (2) it must be performed by persons engaged as solicitors or agents.

511. The following rules govern services rendered to insurance companies, other than services performed by those engaged as solicitors or agents:

Insurance brokers placing insurance with more than one company or engaging in the sale of diversified lines of insurance are deemed independent contractors, on account of whose compensation no contributions are payable under the Act.

Salaried managers of general and branch offices are not deemed independent contractors insofar as their managerial duties and wages are concerned, and contributions shall be paid, based on the wages received by such managers for their managerial duties.

All other salaried employees are "subject" employees.

Nurseries:

512. The exception "agricultural labor" extends to and includes services performed in the cultivation of a nursery, in the same manner and subject to the same conditions as are set out under the definition "agricultural labor".

[fol. 41-21] Article VI

Wages

600. The term "Wages" means all remuneration for employment, whether payable in money or something other than money. The name by which remuneration is designated is immaterial. Thus, salaries, commissions on sales (except as is otherwise herein set out), fees, and bonuses, are wages within the meaning of the Act if payable by an employer to his employee as compensation for services not excepted by the Act.

The basis upon which the remuneration is payable, the amount of remuneration, and the time of payment, are immaterial in determining whether the remuneration constitutes "wages". Thus, it may be payable on the basis of piecework, or a percentage of profits; and it may be payable hourly, weekly, monthly or annually.

The medium in which the remuneration is payable is also immaterial. It may be payable in cash or in something other than cash, such as goods, lodging, food, and clothing. Ordinarily, facilities or privileges (such as entertainment, cafeterias. restaurants, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees and the immediate members of his employees' families, are not consid-

ered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employees or as a means of promoting the health, good will, contentment or efficiency of his employees.

Exclusion from Computation of Wages:

601. Excluded from the computation of wages is all remuneration payable by an employer to an employee for services which are excepted by the Act, or all or the greater portion of which services are customarily performed outside of the State of Alabama.

Dismissal Wages:

602. Payment to an employee of so-called dismissal wages and vacation allowances constitute wages.

Traveling Expenses:

603. Amounts paid to traveling salesmen or other employees as allowances or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.
[fol. 41-22] Allowances to employees for expenses paid to them with their wages or salaries should be included in the payroll unless such expenses are regularly and reasonably segregated on the books of the employer.

Premiums on Life Insurance:

604. Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages, if the employer is not the beneficiary. However, premiums paid by an employer on policies of group insurance covering the lives of his employees are not wages, if the employee has no option to take the amount of the premiums instead of accepting the insurance.

Deductions by Employer from Remuneration of Employees:

605. Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the em-

ployee at the time of the deduction. It is immaterial that the Act, or any Act of Congress, or any law of any state, requires such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

Payments by Employers Into Employee's Funds:

606. Payments made by an employer into a stock bonus, pension, or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee, and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

Sick Benefits:

607. In the absence of a contract requiring the employer to do so, sick benefits paid by an employer to his employees are not wages, and shall not be included with the amount of wages reported for tax purposes. Such payments by the employer are in the nature of a gift and are not remuneration for services rendered.

Pension Payments:

608. Pensions paid to retired employees who perform no service for the employer are exempt from contributions.

Commissions on Installment Purchase Contracts:

609. Where commissions are paid to salesmen each time a purchaser makes a payment on an installment under an in- [fol. 41-23] stallment purchase contract, and such installments are due and payable over a period exceeding one year, the contributions required of the employer and employee shall be payable only on those commissions actually paid during the calendar year.

Tips and Other Gratuities:

610. Tips and other gratuities received by an employee from other than his employer during the course of his employment are not a part of the wages paid him by his employer for services rendered; therefore, no contribution by the employer or by the employee shall be made thereon.

Allowance for Meals:

611. Where not agreed upon by the employer and employee, the minimum value of board furnished an employee as part of his remuneration is hereby declared to be as follows: .

Breakfast	20 cents.
Dinner	20 cents.
Supper	20 cents.

No agreement between the employer and employee shall reduce the value of said meals, for contribution purposes, below the amounts herein set out.

Allowance for Room:

612. Where not otherwise agreed upon by the employer and employee, the minimum value of lodging furnished an employee as part of his remuneration is hereby declared to be $1.50 per week. No agreement between the employer and employee shall reduce the value of such lodging, for contribution purposes, below the amount herein set out. Where a cash value of less than $1.50 per week for lodging furnished an employee by his employer as part of his remuneration has been agreed upon by the employer and employee, for purposes of determining the amount of contribution to be paid upon this non-cash remuneration, the cash value shall be deemed to be not less than $1.50 per week.

In the event the employee's family lives with the employee, no added cash value shall be placed upon the employee's lodging because of this fact.

Bonus Defined:

613. The term "Bonus" included in the Act is hereby defined to mean a sum paid to, or merchandise or other thing of value received by an employee from an employer for services performed, or upon a consideration in addition to or in excess of that which would ordinarily be paid. It [fol. 41-24] is not a gift or a gratuity. A bonus paid to an employee during any calendar year in consideration of services performed by such employee during the preceding calendar year shall be deemed a part of the wages paid to such employee during the year in which it is earned.

Railroad Passes:

614. Passes issued by a railroad company or any other common carrier to its employees and the employees' immediate families, to be used when not engaged on business for the company, and not provided for in the contract of employment, are gifts and not wages. No contributions shall be made on the value of the same.

Employee's Group Insurance:

615. Any contribution made by the employer toward the cost of group insurance for his employees is not a payment for any services rendered, and therefore is not a wage if the employee has no option to take the amount of the premiums instead of accepting the insurance. Consequently, the amount of such contribution by the employer is not to be included with the amount of total wages for reporting purposes.

616. Where an employee makes any contribution toward this group insurance, the amount of his unemployment compensation insurance contribution shall be based upon his wages before such deduction is made.

Part-Time Employees:

617. There is no distinction in the Act between full-time employees and part-time employees. Contributions must be paid, measured by wages payable to each.

Sole Proprietor Drawing Salary:

618. If an employer is organized as a sole proprietor, any salary he might draw from the business is not subject to contribution, for he is not an employee. What he might draw as a salary is profits from his business.

Garnishment of Wages.

619. Employee contributions shall not be subject to levy, execution, garnishment, or assignment.

[fol. 41-25]

Article VII

Contributions

Employer Contribution:

700. On and after the first day of January, 1936, contributions shall accrue and become payable by each em-

ployer then subject to the Act. (Note: For determining what employers were subject to the Act on January 1, 1936, see Article III, Section 303 of Rules and Regulations.)

701. Thereafter (after January 1, 1936) contributions shall become payable by any new employer after the date on which he becomes newly subject to the Act, but shall be computed upon total wages payable since January 1st of the year in which he becomes subject to the Act. (Note: For determining the date on which a person, corporation, association, etc., becomes newly subject to the Act, see Article III, Section 304. It must be remembered that a newly subject employer becomes liable for contributions as of January 1st of the year in which it is definitely determined that he is newly subject to the Act). Contributions of employees of an employer becoming newly subject in any calendar year are payable only from and after the end of the 20th week within which the employer had in his employ eight or more individuals in employment subject to the Act.

702. A subject-employer, engaged in interstate commerce and subject to the Act of Congress, known as the "Railway Labor Act", shall be liable for contributions based on wages paid by him for services performed for him from January 1, 1936, through April 20, 1936.

Beginning April 21, 1936, an amendment to the State Act excepting services performed for such employers is effective.

703. Any insurance company which was a subject-employer on January 1, 1936, under the provisions of the Act before Amendment of April 21, 1936, shall be liable for contributions on wages payable for services performed for it by employees engaged as solicitors or agents from January 1, 1936 through April 20, 1936.

Employer Contributions. Rates:

704. Every employer shall pay contributions equal to the following percentage of the total wages payable (regardless [fol. 41-26] of the time of payment) with respect to employment by him during such year:

(1) With respect to employment during the calendar year 1936 the rate shall be ninety one-hundredths (.90) of one per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty-one-hundredths (1.80) per centum;

(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) per centum, except as is set out in the next succeeding rule (Rule 705)

Future Rates, Based on Benefit Experience:

705. Based on actual contribution and benefit experience of employers under the Act, the Commission shall (in the year 1941, and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the entire calendar year, pursuant to said experience and classification. Rates of contribution shall depend on the unemployment hazard in the employer's business.

Employee Contribution:

706. Beginning May 1, 1936, each employee of an employer who was then subject to the Act, who is engaged in employment subject to the Act shall contribute one per-centum of his wages to the fund.

707. When in any current calendar year an employer becomes subject to the Act by reason of the fact that he has employed eight or more persons in employment subject to the Act during twenty weeks, each employee shall be and become liable for employee contributions of one per cent (1%) of wages payable from the beginning of the week next following the completion of the 20th week in which such employer employed eight or more persons in employment subject to the Act. Such employer shall withhold such employee contributions and make payment thereof to the Commission in accordance with the rules of the Commission.

"Defined Payroll".—"Total Wages Payable".

708. These terms mean the payroll on which contributions are based. In arriving at the "defined payroll" or [fol. 41-27] "total wages payable", the entire amount of wages payable to all persons performing any work for the employer is taken. From that amount should be de-

ducted the wages paid to persons not subject to the Act for contributions. The result obtained is the "Total Wage" or "Defined Payroll".

709. The persons whose wages are excluded in the computation may be excluded because:

They are specifically exempted under Section 2 (g) of the Act. (Agricultural labor, government work, etc.) or

They do not customarily perform all or the greater part of their services within the State of Alabama, or

They may be employees of a contractor or subcontractor who has assumed exclusive liability for contributions based on wages paid his employees for services within the usual trade, occupation, profession or business of the employer, or

They are not performing services under a contract of hire, express or implied.

Reference to Exclusion on Reports:

710. Where the right to exclusion from contribution on behalf of any person performing a particular service has been claimed and substantiated on any previous report of an employer, citation of the date of the employer's letter to the Commission originally substantiating the claim, on subsequently monthly Supplemental Reports of Payroll Exclusions, is sufficient. Such a citation is sufficient to cover not only the original person performing the particular service, but may also apply to another person or persons performing the same service subsequently.

Due Dates of Contribution Remittances. Penalty for Delay in Transmission.—In accordance with the authorization in Section 4, sub (a) and sub (d) of the Act, the Commission hereby prescribes the following regulations with respect to the collection of employer and employee contributions required under the law.

711. Employer contributions shall accrue each month on the "defined payroll" (See this Article No. 708) of the employer, and the accruals shall mature on the first day of the following month. The matured sums shall be paid on or before due dates, which will be assigned to each employer. In assigning these due dates the Commission will take into consideration the business location, number of [fol. 41-28] employees on the payroll and other reporting factors. If such due date is not convenient to the employer,

upon submission of acceptable reasons the Commission will assign a due date more nearly the convenience of the employer. Until and unless an employer has received an assigned due date, his due date will be the 15th day of the month following the month for which the contributions had accrued and were payable. The period elapsing between the maturity date of the contributions (i. e., the first day of the month following the month of accrual) and the assigned due date, is deemed sufficient time for the employer to make the required payments.

712. In the case of an employer who becomes newly subject to the law in any calendar year by reason of employment performed for him within such year, his first contribution payment shall mature on the first day of the month following that month wherein occurred the 20th calendar week within which he had eight or more employees. Such first contribution payment of an employer thus becoming newly subject in the course of a year shall include contributions on his "defined payrolls" from the first of the calendar year. (The law provides such retroactive contribution payments (Section 2-f, in order that employers may secure the full off-set against the excise tax, Title IX, Social Security Act.)

713. Employee contributions required under the Unemployment Compensation Law and withheld from wages by the employer pursuant to direction in Section 4 (d) shall be due and payable by the employer at the same time his contributions are due and payable. (See Nos. 711 and 712 above.) However, in the case of an employer becoming subject in the course of a calendar year, there shall be no withholding from wages of his employees and there shall be no contributions required of his employees except for services performed after the expiration of the 20th calendar week within which the employer shall have eight or more employees in the calendar year, except in case of employers electing to become subject to the Act, in which case contributions shall be due from both the employer and his employees as of the date the Commission approves the application of the employer electing to come under the Act.

714. The interest prescribed by the Unemployment Compensation Law on delinquent payments will be computed from the day following the due date. The Law prescribes

interest at the rate of one per cent per month. (See Section 14-a of the Act). Employer shall be held responsible for interest on past due contributions both with respect to (1) [fol. 41-29] employer contributions and (2) employee contributions. (In computing delinquency, any part of one day shall be considered as a whole day).

Fractions of a Cent:

715. Fractions of a cent less than one half shall be ignored in making deductions and payments for contributions. A fractional part, one half or greater than one half, shall be considered as one cent for the same purposes. An employer shall transmit to the Commission on behalf of each employee the exact amount deducted from the employee's wages.

Over-Payment and Under-Payment of Contributions:

716. If an employer shall make any payment which is in excess of the payments required to be made, to the Fund, the amount of such over-payment will be credited only on the payments due in the month next succeeding that in which the overpayment is discovered. If there is an under-payment, or if it shall be subsequently discovered through an audit or otherwise that contributions accrued have not been paid, the employer shall promptly pay the amounts due with interest on such tardy payments at the rate of one per cent per month, from the date such payments are due.

Method of Payment:

717. The Commission or its agents may receive uncertified checks in payment of the contribution if such checks are collectible at par; that is, for their full amount, without deduction for exchange or other charges. The Commission or its agents will stamp on the face of each check before deposit the words "This check must be paid at par. No protest".

718. Procedure with respect to dishonored checks. If the bank upon which any such check is drawn should, for any reason, refuse to pay it at par the check should be returned through the depository bank and treated as a dishonored check. All expenses incident to the attempt to

collect such check and the return of it through the depository bank must be paid by the drawer of the check, since no deduction can be made from amounts received in payment of contributions.

If any employer whose check has been returned uncollected by the depository bank should fail at once to make the [fol. 41-30] check good, or to pay the amount thereof, the Commission will proceed to collect said contribution. An employer who tenders a check, whether certified or not, in payment of contributions is not released from his obligation until the check has been paid.

719. After a check by any one employer given in payment of contributions required under the Act has been returned by the depository bank unpaid, the Commission reserves the right thereafter to accept from that employer only cash or certified checks.

Deduction of Employee Contribution Where Employee Is Paid More Than Once During Calendar Month:

720. Where an employee is paid daily, weekly, bi-weekly, or upon a fixed term or other basis, or on more terms than one during the calendar month for services performed for the period of the calendar month, the employer must show the deduction of each of his employee's contribution on each payroll, for the period of time covered by said payroll.

Definition of a Month:

721. A "month" as used in the Act and in this regulation has two meanings: (1) In respect to employees paid on a weekly basis, a month is that period covered by all the calendar weeks which end within that calendar month; and (2) In respect to employees paid on any basis except a weekly basis, a month is a calendar month. This rule shall not apply to the month of December during any year.

December Contributions:

722. Contributions for the month of December in each year shall include all unreported wages earned in such month and the current calendar year by employees whether actually paid or not, and further that the first week in the following January shall include only that portion of the week which was not included in the preceding December.

(Note: The law requires that a different rate of contribution be paid on the earnings of each respective calendar year, and it is therefore necessary to make each calendar year a complete unit.)

[fol. 41-31] Article VIII

"All or the Greater Part of the Person's Work":

800. "All or the Greater Part of the Pe-sons Work", etc. Under Section 2 (g) of the Act it is set out that employment means "any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this state under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment.

801. Employment shall be deemed customarily performed within this State and covered by the Alabama Act under the following conditions:

If the majority of the employees working hours are spent within the state.

If an employee's services are performed elsewhere but incidental to the employee's principal employment within the state.

If the two above paragraphs under 801 are not readily determinable and the employee's headquarters or home station is in this state.

Week:

802. The word "week" as used in these Rules shall mean a calendar week unless "an equivalent period" has been adopted by the employer and such "equivalent period" has been approved by the Commission.

[fol. 41-32] Article IX

Records

Employer's Records:

900. Every employer shall keep true and accurate employment records of all individuals employed by him, including

the hours of employment and the wages payable therefor. Such records shall be open to inspection by the Commission or its duly authorized agents every day except Sundays and legal holidays, between the hours of nine o'clock A. M. and five o'clock P. M.

Record of Number of Hours Worked:

901. Where employees receive wages on the basis of piece-work, the employer is required to keep an accurate record of the actual hours worked weekly by such employees.

Normal Work Week for Traveling Salesmen: Commission Men:

902. The normal work week for traveling salesmen, employees working on a straight commission basis, and traveling auditors, shall be 40 hours a week, for contribution purposes.

Record of Hours Where Employees Hired by the Month:

903. Where employees are hired by the month, it is not necessary to make a record of the exact number of hours worked by said employees. It is sufficient to record on the payroll the normal work week, which is set for such employees.

Computing "Weekly Wage":

904. Where an employees' payroll is on a monthly, mileage, tonnage, commission, trip, or piece-work basis, the weekly wage shall be computed as follows: The monthly wage or monthly compensation divided by 26 and multiplied by 6.

This rule merely takes 26 days in a month, divides the monthly wage into a daily one, and then multiplies by 6 to get a weekly wage.

[fol. 41-33] History of Employee:

905. Inasmuch as benefit credits will not begin to accumulate until January 1937, it will not be necessary during the balance of the year 1936 to keep a history of each employee other than his name, date of starting to work, the wages paid, hours worked, kind of work, and such other facts

as are generally kept by employers. Before January 1, 1937, further instructions and rules will be given regarding the history required to be kept of employees.

Payroll Records of Corporations Operating in More Than One State:

906. If an employer is subject to the Act, and is engaged in business in more than one state, such employer shall maintain payroll records in this state for services performed in this state by his employees, so as to comply with the provisions of the Act and the rules heretofore and hereafter to be adopted by the Commission. If the employer has no branch unit in this state, it will be sufficient to furnish copies of sworn payroll to the Commission.

Reports:

907. The Commission may require from any person such reports in connection with his business, covering employment, employees, wages, hours of employment, and related matters as the Commission deems necessary to the effective administration of the Act.

(A copy of these Rules and Regulations is on file with the Secretary of the State of Alabama, in accordance with Section 10 (b) of the Alabama Unemployment Compensation Law.)

[fol. 41-34] Index

	Section
Accountants, as independent contractors	412
Aliens—	
as employers	307
as employees	501
Agents see Employer, Salesmen	
Appeals	215
Bankruptcy, of employer	203
effect on accrued contributions	203
Barbers, as employees	408
Benefits—	
when payable	215
assignment of, not permitted	210
appeals	215
Board, as wages	611

	Section
Bonus, defined	613
Casual labor	411
Checks, payment of contribution by	208, 717
Commissions on installment purchases	609
Contractor, independent, what constitutes	403
Contracts of hire	400
Contributions,	
Definition of	102
December contributions	722
Date of employer liability	303, 304, 712, 713
Date of employee liability	706, 713
Rate of employer contribution	704
based on benefit experience	705
Rate of employee contribution	707
Deductions—	
From wages	605, 720
Fractions of cent	715
Liability of employer for employee deduction	707
Definitions—	
The Act	100
Bonus	613
Commission	101
Contributions	102
Fund	103
Employer	104
Employee	105, 401
Employment	106, 500
Payroll	708
Week	802
Month	721
[fol. 41-35] Dentists, as independent contractors	412
Directors of corporation, remuneration of, as wages	409
Dismissal payments, as wages	602
Doctors, as independent contractors	412
Domestic servants, excepted from the Act	504
Earnings, record of	900
Educational organizations, exemption of	508
Employees, definition of	105, 401
allowances to	600, 611, 612
contribution by	706, 707
distinguished from independent contractor	402, 403
history of	905
wages, see Wages	

	Section
Employers, includes	300
ceasing to be subject	312
contribution rates	704
electing to become subject	313
liability of—	
date begins	303, 304
contractors and subcontractors	305, 306
non-liability for independent contractors	402
non-resident	308, 501
records, see Records	
reports, see Reports	
subsidiaries, branches, etc., considered as one	301, 302
tax, see Tax	
Employment—	
definition of	106, 500
"all or the greater part," etc.	800, 801
excluded from,—	
agricultural labor	503
domestic service	504
government employees	507
insurance agents	510
members of crews of vessels, etc.	505
railroad employees	509
son, daughter or spouse	506
Exempted employment, see Employment	
Expenses, traveling segregated	603
Extra helpers, as employees	418
Fines and penalties	204, 205
Fund, definition of	103
Garnishments of benefits	210
Holding companies	302
Hours worked, record of	901, 902, 903
business hours of the Commission	206
Insurance—	
those engaged as agents or solicitors excluded	510
brokers as independent contractors	511
[fol. 41-36] salaried employees as subject employees	511
salaried managers of branch offices	511
Interest on deferred payments	714
Interstate service	417
Lawyers, as independent contractors	412

	Section
Liability of employer—	
date of beginning	303, 304
Life insurance payments by employers as wages	604
Merit rating, employers based on experience	705
Month, definition of	721
Non-profit organizations	508
Non-resident employees	501
Newsboys and distributing carriers	406
Nurseries, as exempt	512
Officers of a company, as employees	410
Out of state employers	501
Out of state workers	416
Overpayment and underpayment of contributions	716
Part-time employees, not exempt	617
Partner's earnings	311
Payroll taxable	708
Penalties and fines	204, 205
Pension payments, exempt	608
Physicians, as independent contractors	412
Premiums on life insurance	604, 615
Purchase of finished products	413
Rates of contribution—	
employer	704
employee	706, 707
Records—	
employer's—	
hours worked	901
wages payable	900
where employed by month	903
where corporation operating in more than one state	906
Registration of employers	200, 201
Remuneration in other than cash as wages	600, 611, 612, 613
Rehabilitation workers, as employees	414
Rent, as wages	600, 612
Reports required	907
Residence as affecting liability for contributions	308, 501
Rulings, securing from Commission	202
[fol. 41-37] Salesmen, insurance, as exempt	510
Sick benefits, not wages	607
Sole proprietors, not employees	310

	Section
Subcontractor	
contractual provisions to protect employer from liability	305
employees of	305, 306
liability of for contributions	305
Tax, see also Payroll Taxable	
basis of computation	708
employer's	704
employee's	706
Tips, not wages	610
Traveling salesmen, normal work week	902
Vacation pay, as wages	602
Veterinarians, as independent contractors	412
Wages—	
payable, as basis	600
board and meals, as	600, 611, 612
bonuses, as	613
commissions, as	600
employees group insurance donations	615
fees, as	600
rent, as	600, 612
pensions, not as	608
railroad passes, not as	614
tips and other gratuities, not as	610
traveling expenses, as	603
weekly computing of	904
Waterfront activities, not excluded	415
ship repairing, by member of crew	415
stevedore services	415, 505
Week, definition of	802
Weekly wage, computing	904
Workmen's Compensation Acts, effect of	209

[fols. 42–42-1] EXHIBIT "E-3" TO COMPLAINT

Alabama General Laws

(Regular Session, 1935)

No. 447.) (S. 395—Stephens.

Act No. 156, April 21, 1936

AN ACT

To create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide

for contributions to such funds; to provide for benefit payments, from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this act; to establish an unemployment administration fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this act.

Be it enacted by the Legislature of Alabama:

Section 1. Short Title.—This Act shall be known and may be cited as the "Unemployment Compensation Law".

Section 2. Definitions.—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise

(a) "Benefits" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.

(b) "Commission" means the Unemployment compensation Commission established by this Act, or its authorized representative.

(c) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this Act.

(d) Eligibility.—An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this Act from receiving benefits for such week of unemployment.

[fol. 42-2] (e) "Employee" means any person employed by an employer subject to this act and in employment subject to this Act.

(f) "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an "employer" subject hereto, and in determining for what contributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions, under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the State, in all of his several places of employment maintained within the state, shall be treated as employed by a single "employer" for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single "employer" for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon

a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject [fol. 42-3] to written approval of such election by the commission.

Act No. 194, April 21, 1936

(g) "Employment" means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to:

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as here-

after amended. Service performed by those engaged as solicitors or agents for Insurance Companies.

(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(h) "Employment Office" means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

[fol. 42-4] (i) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee.

(1) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers.

(2) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations

(other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked.

(j) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid.

(k) "Partial Unemployment". An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

(l) "Payroll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occur-ing after the employer becomes newly subject to this Act.

(m) "Total Unemployment". An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for per-[fol. 42-5] sonal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

(n) "Unemployment Administration Fund" means the Unemployment Compensation Administration Fund established by this Act.

(o) "Wages" means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages.

(p) "Waiting-period-unit" means a period (for which no benefits are payable but during which the employee is in

all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act.

Act No. 194, April 21, 1936

(q) "Weeks" means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission.

Act No. 194, April 21, 1936

Section 2(r). "Week of employment" means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to this Act, and was not partially unemployed as defined in Section 2(k).

Section 3. Unemployment Compensation Fund.—(a) Fund.—There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements [fol. 42-6] (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn

upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the "Unemployment Trust Fund" of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

Section 4. Contributions.—(a) Payment.—On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

(b) Rates of Contributions.—Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month:

(1) With respect to employment during the calendar year 1936 the rate shall be ninety-one-hundredths (.90) of one per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of one per centum;

(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of — per centum.

[fol. 42-7] (c) Future Rates, Based on Benefit Experience.—Based on the actual contribution and benefit experience of employers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules.

Act No. 194, April 21, 1936

(d) "Contributions by Employees".—Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contributions from the wages of his employees, shall show such de-

duction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules.

Section 5. Benefits.—(a) Payment of Benefits.—After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

(b) Weekly Benefits for Total Unemployment.—An employee totally unemployed and eligible in any week shall [fol. 42-8] be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week.

(c) Weekly Benefits for Partial Unemployment.—An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week.

(d) One-to-Four Ratio of Benefits to Employment.—The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employees most recent week of employment.

(e) Maximum Weeks of Benefit in any Year.—Benefits shall be paid each employee for the weeks during which he

is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks.

(f) Additional Benefits (One-to-Twenty Ratio).—An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

[fol. 42-9] Section 6. Benefits Eligibility Conditions.—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either

(1) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or

(2) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

(b) Availability and Registration for Work.—An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to com-

ply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed:

(c) Waiting Period.—Benefits shall be payable to an employee only for his weeks of unemployment occur-ing subsequent to a "waiting period" whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section.

(d) During Trade Disputes.—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

(e) Voluntary Leaving.—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks.

(f) Discharge for Misconduct.—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for [fol. 42-10] the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case.

(g) Refusal of Suitable Employment.—If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. "Suitable employment" shall mean any employment for which the employee in question is reasonably

fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailiing for similar work in the locality;

(3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

Section 7. Settlement of Benefit Claims.—(a) Filing.—Benefit claims shall be filed at the employment office, pursuant to general commission rules.

(b) Initial Determination.—A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within five calendar days after such notification was delivered to him or was mailed to his last known address.

(c) Appeals.—Unless such request for a hearing is withdrawn the claims thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose. The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission except in cases [fol. 42-11] where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review.

(d) Appeal Tribunal.—To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of one full-time salaried

examiner (or commissioner) who shall serve as chairman, and of two other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses) and shall serve until replaced by the commission except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(e) Precedure.—The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed.

(f) Commission Review.—The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within ten days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(g) Appeal to Courts.—Except as thus provided, any decision (unless appealed pursuant to general commission rules) shall, ten days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission)

within ten days after a decision hereunder has become the final decision of the commission in the disputed case.

[fol. 42-12] (h) Oaths and Witnesses.—In the discharge of their duties under this section any deputy, any member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpœnas (requested by the commissioner of and served by the officers of the circuit court having jurisdiction of the parties) to compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general commission rules, from the unemployment administration fund.

Section 8. Court Review. — (a) Within ten (10) days after the decision of the Commission has become final, either party may appeal to the Circuit Court, sitting in the county of the residence of the employee, from such decision. Upon the filing of any such appeal notice thereof shall be served upon the Commission by the appellant. Such appeals shall be heard by the Court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Said appeal shall be effected by the filing of a brief statement of his grievances by the appellant with the Clerk of said court.

(b) An appeal may be taken from a decision of such Court to the Court of Appeals of Alabama or the Supreme Court of Alabama as now provided by law.

Section 9. Unemployment Compensation Commission.—(a) Organization.—There is hereby created a commission of three members, to be known as the Unemployment Compensation Commission of Alabama. The members of the commission shall be appointed by the Governor within ninety days after the passage of this Act. The Governor shall designate one member as Chairman. The commissioners thus appointed shall serve as designated by the

Governor at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years. At the expiration of such initial terms appointments shall be made for a term of six years in each case. Any appointment to a vacancy shall be for the unexpired term in question. No commissioner shall, during his term of office, serve as an officer or committee member of any political party organization.

[fol. 42-13] (b) Salaries.—The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary travelling expenses.

(c) Meetings.—The commission shall meet one day each calendar month. It shall meet such additional days each month as the business of the commission may require, when authorized by the Governor.

(d) Quorum.—Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission so long as a majority remain. The commission shall determine its own organization and methods of procedure.

Section 10. Administration.—(a) Duties and powers of commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the Governor and the legislature thereof,

and make recommendations accordingly. (Act No. 156, April 21, 1936.)

(b) General Commission Rules.—General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative state-wide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. Such rules may be amended, in the same manner as is above provided for their adoption.

[fol. 42-14] (c) Publication.—The Commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same.

(d) Personnel.—The commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a commissioner. The Commission may in its discretion bond any person handling moneys or signing checks hereunder.

(e) Advisory Councils.—The Governor shall appoint a State-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each

case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary traveling expenses, when approved by the Governor. Said State-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this act and to the other acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience prepare recommendations as to changes, amendments or modifications of such acts and laws of the State of Alabama, and particularly this act, [fol. 42-15] and said recommendations shall be submitted to the Governor and to the Legislature at its next session and at such succeeding sessions as said council may deem proper.

(f) Employment Stabilization.—It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of pra-tical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies.

(g) Records and Reports.—Every employer (of any person in this State) shall keep true and accurate employment record of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any person in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act.

(h) Representation in Court.—On request of the commission the attorney general shall represent the commission and the State in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the Commission with the approval of the Governor, and except as otherwise provided in this act.

(i) State Federal Cooperation.—The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested Federal [fol. 42-16] agency or department, and to accept any sums allot-ed or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditures of such sums.

Act No. 156, April 21, 1936

That Section 11 be and the same is hereby repealed.

Section 12. Reciprocal Benefit Arrangements with Other States.—The Commission is hereby authorized, subject to approval by the governor, upon such terms as in its judgment will not result in any loss to the fund, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compensation system estab-

lished by any state law or by an Act of Congress, as to persons who have (after acquiring rights to benefits under this Act or under such other system) newly come under this Act or under such other system whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

Section 13. Protection of Rights and Benefits.—(a) Waiver of Rights Void. No agreement by an employee to waive his right to benefit or any other right under this Act shall be valid. No agreement by an employee or by employees to pay all or any portion of the contributions required under this act from employers shall be valid. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this Act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation.

(b) Limitation of Fees. No employee shall be charged fees of any kind by the commission or its representatives, in any proceeding under this Act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than ten per centum of the maximum benefits at issue in such proceeding or court action.

(c) No Assignment or Garnishment of Benefits. Benefits which are due or may become due under this Act shall not be assignable before payment, but this provision shall not affect the survival thereof; and when awarded, adjudged, [fol. 42-17] or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

Section 14. Collection of Contributions.—(a) Interest on Tardy Payments. If any employer fails to make promptly,

by the date it becomes due hereunder, any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of one percentum per month from the date such payment became due until paid, pursuant to general commission rules.

(b) Bankruptcy. In the event of an employers' dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefits of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this sub-section shall not impair the lien of any judgment entered upon any award.

(c) Court Action.—Upon complaint of the commission, the attorney-general shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (of any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

Section 15. Penalties.—(a) Whoever wilfully makes a false statement or representation to obtain or increase any benefit or other payment under this Act, either for himself, or for any other person, shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense.

(b) Any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required of such employer under this act or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records as

[fol. 42-18] lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to waive any right under this act, shall upon conviction be punished by a fine of not less than twenty nor more than two hundred dollars, or by imprisonment in the county jail not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation, and each day of such failure or refusal, and each such deduction from wages, and each such attempt to induce shall constitute a separate and distinct offense.

(c) Any violation, of any provision of this Act, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment.

(d) On complaint of the commission the fines specified or provided in this section may be collected by the state in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

Act No. 156, April 21, 1936

Section 16. Unemployment Administration fund.—(a) Special Fund.—There is hereby created the "Unemployment Compensation Administration Fund," to consist of all moneys received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(b) Federal Aids.—All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency for the administration of this Act shall be paid into the unemployment administration fund. Subdivision C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection

with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Compensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment [fol. 42-19] Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred.

Section 17. Appropriations.—All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment Compensation Commission.

Act No. 156, April 21, 1936

It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

That if any section, clause or provision of this act should be held invalid, it shall not effect the remaining portions not so held invalid.

This act shall take effect immediately upon its passage and approval by the Governor.

Act No. 195, April 21, 1936

Section 18. Saving Clause.—The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. It is expressly provided that in the event the Supreme Court of the United States shall hold the Federal "Social Security Act" ap-

proved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or payroll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Section 19. Separability of Provisions.—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and [fol. 42-20] the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20. Effective Date.—This act shall take effect upon its enactment.

Approved September 14, 1935.

(Revised by Alabama Unemployment Compensation Commission to include amendments of April 21, 1936, and published for General Information.)

[fols. 43–43-1] EXHIBIT "E-4" TO COMPLAINT

Text of Those Provisions of the Federal Social Security Act (effective August 14, 1935) Relating to Unemployment Compensation under State Laws

This reprint aims to make readily available to interested Alabama citizens the full text of those federal provisions affecting state unemployment compensation laws.

Printed by the Alabama Unemployment Compensation Commission, which administers Alabama's law in this field, this pamphlet can be obtained from the Unemployment Compensation Commission, 623 Adams Avenue, Montgomery, Alabama.

The following "titles" of the federal Social Security Act are reprinted below:—Title III in full; Title IX, in full; Title XI, so far as applicable.

Title IX includes the following important provisions: (Sec. 901) a new federal excise tax to be paid by employers

of 8 or more persons based on their payrolls; (Sec. 902) credits or offsets against this tax, for an employer's contributions duly paid under any state unemployment compensation law which has been approved by the new federal Social Security Board; (Sec. 903) approval and certification by the Board of state laws meeting certain specified federal standards; (Sec. 904) federal custody and investment of monies contributed under approved state laws; (Sec. 907) definitions applicable under Title IX; (Sec. 909) the allowance of extra credits, against the federal payroll tax, to an employer whose state contribution rate has been reduced because of his steady employment and favorable compensation experience; (Sec. 910) the conditions under which such extra federal tax credits will be allowed.

[fol. 43-2] Title III—Grants to States for Unemployment Compensation Administration

Appropriation

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments To States

Section 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws

Section 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State, or such [fol. 43-3] other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name,

address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

[fol. 43-4] Title IX–Tax on Employers of Eight or More

Imposition of Tax

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax

Section 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with re-

spect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification of State Laws

Section 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment officers in the State, or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

[fol. 43-5] (4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund

Section 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

[fol. 43-6] (b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obliga-

tions of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

Administration, Refunds and Penalties

Section 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the di- [fol. 43-7] rection of the Secretary of the Treasury and shall

be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid or on before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment

of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any [fol. 43-8] extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Interstate Commerce

Section 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions

Section 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, liter- [fol. 43-9] ary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

Rules and Regulations

Section 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

Allowance of Additional Credit

Section 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions im-

posed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

[fol. 43-10] (b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

Conditions of Additional Credit Allowance

Section 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7½ per centum of the total wages payable

by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five time- the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

[fol. 43-11] (c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof, in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment accounts" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve

months, to all the individuals in his employ in one or more distinct establishments, except that any such indivdual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties,

from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

[fol. 43-12] Title XI—General Provisions

Section 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) • • •

(d) • • •

Rules and Regulations

Section 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

Separability

Section 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Reservation of Power

Section 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

Short Title

Section 1105. This Act may be cited as the "Social Security Act."

[fols. 44-44-1] EXHIBIT "E-5" TO COMPLAINT

Contribution Instructions Relating to the Unemployment Compensation Law of the State of Alabama

[fol. 44-2] Contribution Instructions

To employers subject to the contribution provisions of the Alabama Unemployment Compensation Law:

(Keep these Instructions for future reference. They will not be sent to you each month, so please save this copy.)

The Alabama Unemployment Compensation Law requires (Sections 4 (a) and 4 (d)) that each employer subject to the law shall pay contributions to the Alabama Unemployment Compensation Fund at the rate of 9/10 of 1 per cent beginning January 1, 1936, and each covered employee at the rate of 1 per cent beginning May 1, 1936, on all "wages payable for employment". The employer is responsible for

withholding from wages of his employees the contribution required of them under the Act, and for transmitting such employee contributions to the Commission. The employer can withhold only one per cent from employee's wages. It is unlawful for him to withhold from wages of employees any portion of his own contributions.

Inasmuch as the Alabama law has been approved by the Federal Social Security Board, each employer may secure the maximum credit allowable for his contributions to the Alabama Unemployment Compensation Fund against the federal excise tax on total wages in employment of employees of employers of eight or more (1 per cent of 1936 payrolls with maximum credit allowed for contributions to a state fund of 90 per cent of the tax).

The Alabama Unemployment Compensation Commission will collect contributions monthly. Since contributions have been accruing for eight months, the Commission provides for (a) an initial payment covering four months, January 1 to April 30, 1936; (b) a second payment covering May 1 to August 31, 1936, and (c) regular monthly collections [fol. 44-3] thereafter. The contributions for the periods ending April 30, 1936, and August 31, 1936, shall be due not later than September 21, 1936.

See Article V, Rules and Regulations, for the classifications of employment that are exempt from contributions.

Persons employed partly in Alabama and partly outside are to be included if the greater part of their services are customarily performed in Alabama (See Sections 800 and 801, Rules and Regulations). Persons customarily employed by the employer for the greater part of their time in other states are not to be considered for the present. Supplemental Instructions will be issued, covering such classes of employees after the Commission has acted under authority to enter into reciprocal agreements with other states given in Section 2 (g) of the Act.

Reports to be Made by Employers

The law provides (Section 10 (g)) that "the Commission may require from any employer any reports covering persons employed by him, on employment, wages, hours, unemployment and related matters, which the Commission deems necessary to the effective administration of the Act". Dur-

ing the first year of the operation of the Act, only one type of report is required from employers.

Attention is called to Form C. R. No. 3, enclosed, and the instructions on the back of the Form. This is a monthly summary report showing the number of employees, hours worked and amount of wages paid on which the employer's contribution is based. This form will be used after August 31, 1936.

These report forms will be sent by the Commission each month to employers who are subject to contributions. However, when an employer is in fact subject to the contribution provisions of the law by reasons of employment performed for him, failure to receive this reporting form does not affect his status or postpone his liability to make required contributions.

[fol. 44-4] Special Forms, C. R. No. 1 and C. R. No. 2, are enclosed on which to report contributions for the periods January 1 through April 30, 1936, and May 1 through August 31, 1936, respectively.

Where employees are paid on a "weekly" basis, the report for a respective calendar month should contain information for the weeks ending in that month. A part week at the end of a month should be included in the report for the next month.

On the initial reports for the periods January 1 through April 30, 1936 and May 1 through August 31, 1936, the weeks need not be split between the months, January-February, February-March, March-April, May-June, June-July, July-August. However, care should be exercised in the case of "employer" contribution to split the week in which January 1 occurred and include in that report only the portion of the week falling in 1936, and in the case of both four month reports to split the week in which May 1 occurred.

The same condition which requires splitting the week will occur when reporting the last week in December, as each year must be complete in itself due to the change in rate of contribution. (Section 722 Rules & Regulations).

Beginning January 1, 1937, complete reports must be made of each employee's weekly hours and wages for purposes of determining full time weekly wages and the amount of benefits in accordance with Section 5 (a) of the law. Instructions for these reports will be sent later.

Records to be Kept by Employer

The Alabama Law provides (Section 10 (g)) that each employer shall keep "true and accurate employment records containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary."

The records necessary for the employer to prepare the summary contribution report—and for payroll audits by the [fol. 44-5] authorized representatives of the Alabama Unemployment Compensation Commission—shall contain the following items for each person on the payroll:

1. Employee's name (and identifying number if any).

2. Number of hours worked each week during the payroll period (unless the employee is on a fixed stipend and receives full pay regardless of the number of hours worked; in such cases the scheduled hours should be specified).

3. Money wages paid by the employer during the payroll period.

4. Other compensation during the payroll period, itemized. (See Sections 600-613, Rules and Regulations, and instructions on reverse side of C. R. No. 3).

5. Deferred payments, such as bonuses, if any, and the period covered.

Provision should be made for recording the total number of employees on the payroll, the weekly hours scheduled, the duration of the payroll periods, and the dates covered, and for totaling the items covering hours, money wages, other compensation, and deferred payments.

The Alabama Unemployment Compensation Commission is not concerned with the forms on which employers keep such records. The payroll form in use will be satisfactory if it contains all the items specified. Employers who wish suggestions concerning a payroll form may write to the Commission.

Interest on Past Due Contributions and Penalties

Attention is called to Section 14 of the Act and Section 714 of the Rules and Regulations concerning interest on

past due contributions and to Section 15 of the Act and Section 204 of the Rules and Regulations, concerning penal-[fol. 44-6] ties for false statements and misrepresentations or failure to disclose a material fact to avoid or reduce any contributions required under this Act.

Credit for Contributions made to State Unemployment Compensation Fund

Regulations No. 90 of the United States Treasury Department, Bureau of Internal Revenue, Relating to the Exeise Tax on Employers under Title IX of the Social Security Act, provides for credit up to 9/10 of the 1 per cent payroll excise tax, which the employer is required to pay to the Federal Government, if such 9/10 of 1 per cent is paid into a state unemployment compensation fund. However, in order to secure such credit, the Treasury Department must be furnished with a certificate from the Unemployment Compensation Commission, showing the amount of contribution the employer has made to the fund. Employers are, therefore, urged to forward their contribution promptly at the time due so that the necessary certificates may be properly prepared.

All questions concerning contributions or the operation of the Alabama Unemployment Compensation Act should be addressed to:

Alabama Unemployment Compensation Commission. J. L. Kaufman, Chairman, 623 Adams Avenue, Montgomery, Alabama.

September 1, 1936.

EXHIBIT – "E – 6" to COMPLAINT

S. R. 1

EMPLOYER'S STATUS REPORT

TO THE

UNEMPLOYMENT COMPENSATION COMMISSION

UNDER THE

ALABAMA UNEMPLOYMENT COMPENSATION LAW

A. GENERAL INFORMATION

This form is returnable in ten days of receipt to the Unemployment Compensation Commission of Alabama, Montgomery, Alabama.

Firm Name of Employer _____

Business Address _____

Places of Business in Alabama

(Attach list if more space is required.)

Nature of Business _____ (If non-profit and devoted exclusively to charitable, educational, etc. purposes, see Rule No. 6, "Information & Instructions," as to reporting requirements.)

Type of Organization _____ (Individual, partnership, corporation, etc.)

Date of Organization _____ (If corporation, give date and State of incorporation)

If Foreign Corporation, give date of registration in Office of Alabama Secretary of State _____

Predecessor, if any, from whom business was acquired _____

Date of acquisition _____

Is employer affiliated directly or indirectly with any other Alabama employer, either as parent company or subsidiary, or through majority ownership or control by a common parent or holding company, or otherwise _____

If so, set out in detail such affiliation _____

Total Alabama Payroll for 1935 - $ _____

If reporting employer acknowledges by signing the following certificate, that he is subject to the contribution provisions of the Unemployment Compensation Law, HE NEED NOT FILL IN THE REVERSE SIDE OF THIS FORM.

I certify that the nature and extent of employment in my business during 1935 was such as to make me liable, under the provisions of the Alabama Unemployment Compensation Law, for contributions to the Unemployment Compensation Fund established by that law.

Name of Employer _____

By _____

DESCRIBE FULLY THE EXACT NATURE OF YOUR BUS... Official Position _____

B. WEEKLY REPORT

Weekly Record of all persons who performed any service in the business of the Reporting Employer in the Year 1935

No. of Weeks in Year	A	B	C	D	E	F	G	H
	Total Number of Persons	Number claimed as exempt under provisions of Act set forth in "Information & Instructions" under Rules 1 to 8					Net Total in Employment	(Do not fill in)
		Rule 7	Rule 8	Rule 1	Rule 4	All Others		
1 wk.								
2 "								
3 "								
4 "								
5 "								
6 "								
7 "								
8 "								
9 "								
10 "								
11 "								
12 "								
13 "								
14 "								
15 "								
16 "								
17 "								
18 "								
19 "								
20 "								
21 "								
22 "								
23 "								
24 "								
25 "								
26 "								
27 "								
28 "								
29 "								
30 "								
31 "								
32 "								
33 "								
34 "								
35 "								
36 "								
37 "								
38 "								
39 "								
40 "								
41 "								
42 "								
43 "								
44 "								
45 "								
46 "								
47 "								
48 "								
49 "								
50 "								
51 "								
52 "								

Number of weeks of eight or more in employment _____

I certify that the foregoing information is true and correct to the best of my knowledge and belief.

Name of Employer _____

By _____

Date of Submission _____

Official Position _____

_____ 1936

45½

147

Form C.R. No. 2
Alabama U.C.C.

EXHIBIT - E-7" to COMPLAINT

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For the Period ~~January 1~~ May 1 through ~~March 31~~ August 31 1936, Due not later than September 28, 1936.

Location of establishment
covered by this report
(if address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
			Total				
Half Month	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
			Total				
Month	1						
	2						
	3						
	4						
			Total				
Deferred payments if any							
			Grand Total				

Employer's Contribution (9/10 of 1 per cent of grand total Column 7) - - - - - - - - - - - - - - - - $
Employee's Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) - - - - - - - - - - - - - - - -
Total Contributions - - - - - - - - - - - - - - - -

Reverse side
Form C.R. No. 2
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly pay rolls (for all or some of your employees) use lines 1 to 18 for the 18 weeks from May 1 through August 29, 1936. (The week of April 26 to May 2 should be split to begin from May 1. The week of August 30 to September 5 should be included on the September report.) (The weeks need not be split between the months May-June, June-July, and July-August.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months May through August, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, May through August, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as annual bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

EXHIBIT - "E - 8" to COMPLAINT

Form C.R. No. 1
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER'S CONTRIBUTION

For the Period January 1, through April 30, 1936, Due not later than September 28, 1936.

Location of establishment
covered by this report _____
(if address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week,	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
			Total				
Half Month	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
			Total				
Month	1						
	2						
	3						
	4						
			Total				
Deferred payments if any							
			Grand Total				

Employer's Contribution (9/10 of 1 per cent of grand total Column 7) - - - - - - - - - $ _____

1 per cent per month interest if delinquent from due date as set out above - - - - - - - - _____

Total remittance enclosed - _____

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Ala.)

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer _____

By _____

Date signed _____ Official Title _____

On the first line of the signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

(See reverse side for Instructions)

47

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Reverse side
Form C.R. No. 1
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly payrolls (for all or some of your employees) use Lines 1 to 18 for the 18 weeks from January 1 through April 30, 1936. (The week of December 29, 1935, to January 4, 1936, should be split to begin from January 1. The week of April 26 to May 2 should be split to close with April 30.) (The weeks need not be split between the months January-February, February-March, and March-April.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months January through April, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, January through April, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as anndal bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

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EXHIBIT "E - 9" to COMPLAINT

Form C.R. No. 3
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For Month of _____ Due _____

Location of establishment covered by this report _____
(if address is different from that shown in right hand corner)

(1) Duration of pay period		(2) Date of end of pay period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money Value of Other remuneration	(7) Total Earnings Cols. 5 and 6
Week	A						
	B						
	C						
	D						
	E						
	F		Total				
Half Month	G						
	H						
	I		Total				
Month	J						
Deferred payments if any	K						
			Grand Total				

M. Employer Contribution (9/10 of 1 per cent of L-7) - - - - - - - - - - - - $ _____

N. Employee Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) - - - - - - - - - - - - - - - _____

O. Total Contributions (total of lines M and N) - - - - - - - - - - - - - - _____

P. 1 per cent per month interest if delinquent from due date as set out above - - - - - - - - _____

Q. Corrections (if any) for previous over-payment - - - - - - - - - - - - _____

R. Corrections (if any) for previous under-payment - - - - - - - - - - - - _____

S. Total remittance enclosed - - - - - - - - - - - - - - - - - - _____

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Alabama.)

Please explain here the reason for any marked change in employment, man-hours, or pay rolls since your last report:

_____

_____

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer _____

By _____

Official Title _____

Date signed _____

On the first line of the Signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

See reverse side for Instructions.

Reverse side
Form C.R. No. 3
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORTS

Pay Roll Periods
Lines A to L.

If you have weekly pay rolls (for all or some of your employees), enter the totals for each weekly pay roll period ending within the month (there will be four or five) on lines A to E, and total them on Line F. Except for the first and last weeks of each year, reports should be made only for complete weeks; a part week at the end of a month should be included in the report for the next month. However, at the end of the year (December), report any fraction of a week necessary to account for all wages payable in the year. The remaining fraction of the week that is in the following January is to be included in that report for January.

If you have bi-weekly pay rolls, report them on lines A to E as indicated above.

If you have semi-monthly pay rolls (for all or some of your employees), enter the total for each pay roll on lines G and H, totaling them on line I.

If you have a monthly pay roll (for some or all of your employees) enter the totals on line J.

On line K should be entered all deferred payments—that is, all payments such as annual bonuses for services performed in periods prior to the month for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Total all pay rolls on line L.

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

Under the request to explain any marked changes in the report, indicate any factor such as fire, flood, closing for repairs or inventory, re-opening after shut-down, etc., which will explain any abrupt change in your pay roll.

GENERAL INSTRUCTIONS

This Contribution Report is designed for listing of pay rolls ending within the period for which a report is made. Employers having several pay rolls on the same bases within the same period, such as weekly for laborers and semi-monthly or monthly for office employees, must make separate report of each pay roll on the same basis.

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719 Rules & Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Line L of the last sheet of the group.

Additional forms may be secured on application to the Commission.

48½

BROWN PRINTING CO., MONTGOMERY 1936

EXHIBIT - "E - 10" to COMPLAINT

EMPLOYERS MUST POST THIS CARD

Only the Cards Furnished by the Commission May Be Used.
Additional Cards May Be Procured by Registered Employers by Application to the Commission

Unemployment Compensation Law

NOTICE IS HEREBY GIVEN That _____ _____
Business Firm Name Address

is subject to the Unemployment Compensation Law of the State of Alabama and has registered as being subject to said law with the Alabama Unemployment Compensation Commission.

_____
Chairman

This card is furnished to all employers registered with the Commission for the purpose of advising workers that they are covered by the provisions of the Alabama Unemployment Compensation Law. For further information regarding this law address your communication to the Commission, Montgomery, Ala.

ALABAMA UNEMPLOYMENT COMPENSATION COMMISSION

[fol. 50] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING RESTRAINING ORDER, ETC.—Filed October 9, 1936

An original bill having this day been filed in the above styled cause and having been brought to the attention of the Court and the undersigned Judge of the Court, and it appearing to the Court that the complainant herein under Section 266 of the Judicial Code of the United States, as amended, has made an application for an interlocutory injunction based on the allegations contained in the bill of complaint, which is duly sworn to, and it further appearing to the Court that such application for such injunction and the relief prayed for in said bill of complaint is upon the ground of the unconstitutionality of the statute of the State of Alabama commonly known as the Unemployment Compensation Law; and it further appearing to the Court that irreparable loss or damage will result to the complainant unless a temporary restraining order is granted as therein prayed for, because:

(a) Respondents have declined to postpone the time set for the payment by complainant of contributions under the Alabama Act amounting to approximately $3,500.00, and have notified complainant that if it fails to pay such contributions on or before October 9, 1936, it will be treated in [fol. 51] default and all the provisions and penalties of the act will be enforced against complainant on account of such default;

(b) Such penalties and actions include an additional charge for interest at the rate of one percentum per month from October 9, 1936, the institution against complainant of actions or proceedings for the recovery of the contributions that are now due or may hereafter become due, the probable subjection of complainant, and its officers or agents, to a fine of not less than $20.00 nor more than $200.00, or imprisonment in the county jail not longer than sixty days, or by both, for its willful failure or refusal to

pay such contributions on or before October 9, 1936, and its probable prosecution as a separate and distinct offense for each day that such failure or refusal to pay such contributions continues; the probable subjection of complainant, and its officers or agents, to a fine of not less than $20.00 nor more than $200.00, or imprisonment in the county jail not longer than sixty days, or by both, for its willful failure or refusal to furnish the Commission the reports which said Commission had by its order required complainant to make on or before October 9, 1936, and to a prosecution as a separate and distinct offense for each day that such failure to pay such contributions continues, and it being practically impossible for complainant, within such time, to make such reports; because of the fact that a multiplicity of suits and the attendant large costs to which complainant will be subjected in the defense of such suits and actions is a reasonable probability.

(c) Respondents have expressed the intention of immediately, upon collecting the contributions, to dispose of them in compliance with certain provisions of the Alabama Act and the Federal Social Security Act, which will withdraw such contributions from the jurisdiction of any Alabama Court, and will leave the complainant without any adequate remedy for a refund or recovery of the same.

(d) It is impossible for an adequate hearing to be held on the petition for preliminary injunction prior to October [fol. 52] 9, 1936.

(e) No substantial injury will result to the respondents from the issuance of the restraining order and, on the contrary, immediate and irreparable injury, loss or damage, will probably result to the applicant.

It is, therefore, Ordered, Adjudged and Decreed by the Court as follows:

1. That upon complainant entering into a bond, with surety approved by the Clerk of this Court in the sum of $500.00, and conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined and restrained thereby, or by the deposit of a like amount in cash as like security with the Clerk of the Court, a temporary

restraining order be and the same hereby is granted as prayed for in said bill, and said respondents, their agents and employees, separately and severally, be and they hereby are temporarily restrained, until the further order of the Court, from directly or indirectly exercising or attempting to exercise any of the duties or performing or attempting to perform any of the functions sought to be conferred by said Alabama Act upon said Commission, or doing or performing any other acts of any kind or character under the claim of any authority sought to be given said respondents by the Alabama Act, or from in any way putting in operation or executing any order made by the Commission acting under and pursuant to the Alabama Act, or from enforcing or attempting to enforce, or operating or attempting to operate, or executing or attempting to execute, any section of the Alabama Act, or from enforcing or attempting to enforce, or executing or attempting to execute, any order made by any administrative board or commission acting under and pursuant to the Alabama Act; that such temporary restraining order shall remain in force only until the hearing and determination of the application for interlocutory injunction held upon notice as hereinafterwards provided for, and unless further extended by order of the Court not beyond ten days from the date hereof.

[fol. 53] 2. That this order be entered at once, endorsed with a date and hour of its issuance, to-wit, three o'clock P. M., October 9, 1936, and that it be forthwith filed in the Clerk's Office and entered of record.

3. That the Judge of this Court will immediately call to his assistance to hear and determine the application for a temporary injunction two other Judges, as provided for by said Section 266 as amended, of the said Judicial Code, and said application, subject to further orders of the Court, shall be and the same hereby is set down for hearing and determination in the court room of this Court at Ten o'clock A. M., on the 22nd day of October, 1936, and that at least five days notice of the time and place of such hearing be given to the Governor and to the Attorney General of the State of Alabama, and to each of the respondents herein named. It is further provided that the attorneys for the complainant are authorized to give such notice and to make proof of such service.

4. All other matters are reserved for such further orders as may seem just and proper in the premises.

This the 9th day of October, 1936.

C. B. Kennamer, Judge of the District Court of the United States for the Middle District of Alabama.

[fol. 54] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING CAUSE FOR HEARING—Filed October 29, 1936

Heretofore in this cause, on the 9th day of October, 1936, an order was made and filed on the same date, a full and complete copy of which order is hereto attached, marked Exhibit "A" and made fully a part hereof. Thereafter, at the request of the Attorney General, representing the then defendants to the bill, the hearing of the application for a temporary injunction was postponed from ten o'clock A. M. on the 22nd day of October, 1936, until ten o'clock A. M. on the 30th day of October, 1936.

On this, the 28th day of October, 1936, it was made known to the court that the Honorable Bibb Graves, individually, and as Governor of the State of Alabama, had not been given notice of the time and place of the hearing of the application for a temporary injunction before the statutory court and the court was notified that he desired the full five days notice as required by the statute.

It is, therefore, Ordered, Decreed and Adjudged that the hearing of the application for a temporary injunction be and the same hereby is set down for hearing and determination in the court room of this court at ten o'clock A. M. on the 18th day of November, 1936, before the statutory court consisting of Judge Samuel H. Sibley, Circuit Judge of the [fol. 55] Fifth Judicial Circuit and Judge R. T. Ervin, a District Judge and C. B. Kennamer, the District Judge to whom and in whose court the application for a temporary injunction was presented and filed, the former two having been in accordance with Section 266, as amended, of the Judical Code, called to the assistance of the undersigned to hear and determine said application.

It is further Ordered, Decreed and Adjudged that a copy of this order, including Exhibit "A" hereto attached, and

a copy of the amended bill filed herein be served by the Marshal of this Court, or one of his authorized deputies in person upon the Honorable Bibb Graves, individually and as Governor of the State of Alabama.

It is further Ordered, Decreed and Adjudged that the restraining order heretofore granted to the plaintiff by the court in this cause be continued in full force and effect until the Statutory Court shall have heard and disposed of said application for a preliminary injunction, which is set for hearing and determination as aforesaid on November 18th, 1936.

All other matters reserved for such other and further orders as may seem just and proper in the premises.

Dated this 29 day of October, 1936.

C. B. Kennamer, District Judge.

United States of America,
Middle District of Alabama, ss.:

I certify and return that on the 29th day of October, 1936, I received the within order and that I served a full, true and correct copy of the same together with all exhibits attached and all endorsements thereon and a copy of the amended bill of complaint on the Honorable Bibb Graves, individually and as Governor of the State of Alabama at his office in Montgomery, Alabama, on the 29th day of October, 1936.

Walter Bragg Smith, United States Marshal, by C. E. Smith, Deputy Marshal.

[fol. 56] [File endorsement omitted]

In United States District Court

[Title omitted]

Motion to Dismiss—Filed November 7, 1936

Come the defendants and respectfully move the Court to dismiss the amended bill of complaint in this cause and for grounds show:

1. There is no equity in the bill.

2. The plaintiff has a full, complete and adequate remedy at law.

3. The bill seeks to enjoin the administration and enforcement by the defendants of the Unemployment Compensation Law of the State of Alabama upon the alleged ground that said Act is violative of the Constitution of the United States and of the State of Alabama, when, for aught that appears in the bill, the said law is a valid Act of the Legislature of Alabama and violates no provision of either the Federal or State Constitution.

4. By the bill the plaintiff seeks to enjoin the defendants from executing the duties of their office with reference to the Unemployment Compensation Law of the State of Alabama upon the ground that said law is unconstitutional and void, when, as a matter of law, the said Act is valid, and it is the legal duty of these defendants to uphold, administer and enforce the same, as appears by the allegations of the bill.

5. The bill seeks to procure this Court's injunction of the defendants from discharge of their duties as officers of the State of Alabama under said State's Unemployment Compensation Law, upon the alleged ground that the enforcement of said law by these defendants, in pursuance of the terms of the law and of their official duties, will work irreparable injury to the plaintiff, when, in the meaning of [fol. 57] the term "irreparable injury" as known to the law and as defined by equitable rules and practices which prevail in this Honorable Court, such will not result to the plaintiff.

6. For aught that appears in the bill, the plaintiff by obeying the law, or by disobeying it, will not suffer irreparable injury, within the meaning of that term in law and in equity.

7. While the defendants are sued individually as well as in their official capacities, the bill is, in practical effect, a suit against the State of Alabama, and for aught that appears in the bill, the State has not given its consent to be so sued and no court has jurisdiction of said suit without the State's consent.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per Se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 10, 1936

Come the defendants, jointly, separately and severally, and without waiving their right, or the rights of either of them, to have the cause dismissed upon the grounds set forth in the motion to dismiss, and reserving those rights, the defendants jointly, separately and severally, for answer to the bill of complaint as amended, state as follows:

1st. For answer to the first paragraph of the bill of complaint as amended the defendants admit the averments thereof.

2nd. For answer to the second paragraph of the bill of complaint as amended the defendants admit the averments thereof.

3rd. For answer to the third paragraph of the bill of complaint as amended the defendants admit the averments thereof.

4th. For answer to the fourth paragraph of the bill of complaint as amended the defendants say that the allegations thereof are only conclusions of law and not statements of fact, and are not warranted by the allegations of facts contained in the bill of complaint as amended. The defendants further specifically deny that the Federal act (Public No. 271) is the indispensable base of the State Act and fur- [fol. 59] ther deny that the State Act is wholly incapable of operation unless the Federal Act is valid, operable and constitutional as alleged in the bill of complaint as amended. Further answering the averments of said paragraph, the defendants say that the State Act is a separate and distinct enactment susceptible of full and complete operation in the manner intended by the Legislature of Alabama as expressed in said Act irrespective of the operation, existence or validity of the said Federal Act.

5th. For answer to the fifth paragraph of the bill of complaint as amended, the defendants admit the allegations thereof.

6th. (a) For answer to the sixth paragraph of the bill of complaint, as amended, the defendants admit that at the

times mentioned therein the plaintiff has been engaged in the State of Alabama in the business of mining and marketing coal as alleged. Defendants admit that all coal sold by it is delivered to the buyer f. o. b. car at the railroad station Boothton, Alabama, and that all its employees mentioned engage as such solely in the mining and preparing coal for the market and perform no duties in interstate commerce, and that in connection therewith the plaintiff has and has had at such times invested in lands, leases and plant property and equipment, including good will as alleged therein, at its place of business in excess of $100,000.00, and that at all times mentioned therein the plaintiff has employed in its operations three hundred employees in the State of Alabama.

(b) Defendants admit that coal production in Alabama is of a seasonable nature, and admit that the plaintiff operated its business for 193 average work days in 1930, 206 average work days in 1931, 116 average work days in 1932, 186 average work days in 1933, 214 average work days in 1934, and 159 average work days in 1935, but defendants deny that plaintiff's operations have been idle only for the number of average work days averred for these years, but say that plaintiff's own statement of the number [fol. 60] of days actually worked shows plaintiff's operations to have been idle a greater number of days during these several years. Defendants further deny that plaintiff's record of operation is consistent with the operations of other companies in Alabama engaged in the mining and sale of domestic and steam coal, but defendants are informed and believe and on such information and belief aver that the business of mining and selling coal in Alabama has been affected by the severe economic depression to a marked degree in curtailment of actual production, number of average work days of operation and number of persons employed. Defendants are not informed of the facts in reference to plaintiff's labor turnover or the source of plaintiff's labor supply or the labor supply of the coal mining industry in Alabama generally, whether from rural or industrial settlements, but deny the materiality or relevancy of such averments to the issues in this case, and to the extent that such averments may be material, demand strict proof thereof.

(c) Defendants aver that they are informed and believe that intrinsically plaintiff's business is not only seasonal but also otherwise dependent upon the expected fluctuation of orders for its products and that, while plaintiff has managed to keep the great majority of its employees on its pay roll, it has found it necessary always to limit the hours and days of their work according to the orders on hand and the sea-ons and the weather or for other reasons known to the plaintiff. Defendants further aver that, from the very nature of the plaintiff's operations, it is necessary to maintain and have available a force of laborers greater in number than can be profitably employed in its works over the entire year; and that the plaintiff, in fact, maintains this reserve labor pool in the operation of its businesses; and that, in order to have reserve labor available, when needed, the plaintiff resorts to the so-called spread of work, among all of its employees, by which scheme it results that many of plaintiff's employees at some substantial times or periods [fol. 61] during the year are required to lay off from work in plaintiff's operations for certain days during the ordinary work week, during which times plaintiff either operates with a lesser number of employees or suspends its operations altogether. In the reports of its operations filed with the Alabama Unemployment Commission for the period May 1st to September 30th, 1936, it clearly appears that substantial unemployment has existed during this year in plaintiff's business and that the employees of plaintiff have suffered from partial unemployment as high as fifty per cent or thirty-three and one-third per cent, according as the percentage is figured upon the maximum or minimum number of hours worked during the various two weeks' periods, as reported by plaintiff to the Alabama Unemployment Commission under the provisions of the Alabama Act. These defendants further say that under the history and the general conditions of the plaintiff's business and of the general business such as plaintiff is engaged in, it is clearly apparent that plaintiff's employees will benefit largely by the unemployment insurance set up under the Alabama Act and that the plaintiff itself will enjoy the beneficent effects of the Act in lessening the evils of unemployment in Alabama.

7th. For answer to the seventh paragraph of the bill of complaint as amended the defendants say that they admit

the averments thereof with respect to the amount due from plaintiff at the time of filing the original bill of complaint, but are not informed of the facts in reference to what amounts may be due in the future or the amount of plaintiff's future payrolls, and therefore neither admit nor deny such allegations.

8th. For answer to the eighth paragraph of the bill of complaint as amended the defendants admit the averments thereof.

9th. (a) The defendants admit the allegation contained in paragraph IX of the bill of complaint that the Governor of the State of Alabama duly appointed the defendants Kaufman, Brown and Lipscomb as members of the Alabama [fol. 62] Unemployment Compensation Commission pursuant to the powers vested in him by Section 9 of the Alabama Act. The defendants further admit that the defendant Kaufman was designated as Chairman of said Commission, that said Commission, as duly constituted, is legally performing all such acts as are required of it by the Alabama Act, and that it has opened and is maintaining its offices in the City of Montgomery, Alabama.

(b) The defendants deny that said Commission has engaged the services of any person or employee other than those authorized pursuant to section 10(d) of the Act or has utilized the services of any person other than those authorized by section 10(d) of the State Act. The defendants further deny that they have engaged in any publication activities other than those authorized by section 10(c) of the Act, nor spent any funds for any publication purpose other than those prescribed by section 10(c).

(c) The defendants admit that the Commission has issued rules and regulations with reference to the Records and Reports covering contributions payable, employment and related matters required of employers pursuant to section 10(g) of the Alabama Act and has required such reports and records to be filed with the Commission. The defendants further state that the rules and regulations issued relative to the records and reports to be kept and filed by employers are reasonable and properly adapted to insure the efficient and effective administration of the Act.

(d) Defendants deny that they have notified or threatened the plaintiff or any other employer in the State of Ala-

bama, and subject to the terms of the Act, that they intend to enforce the penalties prescribed by the Alabama Act, sections 14 and 15 thereof, for the violation of any of the provisions of said Act, other than in the manner provided by the Act, which can be accomplished only in an orderly proceeding in a court of competent jurisdiction and in which [fol. 63] the plaintiff could assert by defense every right, claim or immunity which it seeks to assert in this suit.

(e) The defendants deny that they have threatened the plaintiff or any other employer subject to the provisions of the Alabama Act that in the absence of compliance by the plaintiff with the provisions of the Alabama Act, they will not issue certificates with respect to credits under Title IX of the Federal Social Security Act, but state that they have no power to compel the granting or denial of any credit under Title IX of said Federal Act and that unless the contributions required of the plaintiff are paid, no receipt therefor such as may entitle plaintiff to claim any credit under Title IX of the Federal Act can be issued.

(f) The defendants admit that they will proceed to administer the Alabama Act in accordance with the provisions thereof.

(g) The defendants admit that Exhibits E and E-1 to E-10, inclusive, constitute true and correct copies of documents and papers prepared and circulated by the Commission.

10th. For answer to the tenth paragraph of the bill of complaint as amended the defendants admit the plaintiff pays substantial sums as ad valorem and other taxes to the State of Alabama and the counties, but deny the materiality thereof to the issues in this case, and deny the claimed right of the plaintiff to maintain this suit as a taxpayer of the State of Alabama.

11th. For answer to the eleventh paragraph of the bill of complaint as amended the defendants deny separately and severally all of the allegations contained therein save only that relative to the deposit of the contributions collected under the Alabama Act in a trust fund created by the Federal Act.

Further answering said paragraph eleventh defendants say that the Alabama Act is an independent and complete

[fol. 64] enactment, and is not so inextricably interlocked with or dependent upon the Federal Act that, in the event of the invalidity or unconstitutionality of the Federal Act the Alabama Act must necessarily fall therewith. The defendants aver that the provisions of the State Act relative to the deposit of the contributions collected thereunder are as follows:

"SECTION 3. Unemployment Compensation Fund.—(a) Fund.—There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

"(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

"(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the

unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

"(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the 'Unemployment Trust Fund' of the United States Government or its authorized agent, so long as said [fol. 65] trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time."

That the provisions of the Federal Act for the creation of a trust fund in which the contributions collected under the Alabama Act may be deposited and withdrawn are as follows:

"904(a). Unemployment Trust Fund; Establishment; Investment; Payments to States.—(a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Unemployment Trust Fund', hereinafter called the 'Fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-

bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

[fol. 66] (e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment."

Defendants aver that under the above cited provisions of the State and Federal Acts the withdrawal and release of said funds when so deposited in the Unemployment Trust Fund are exclusively and wholly at the discretion of the Unemployment Compensation Commission, when made and done for purposes provided by the Alabama Act and in pursuance of the terms of the Alabama Act.

These defendants deny that the only provision made for the expenses of administering the Alabama Act is an appropriation of Federal funds provided by the Federal Act for such purposes. Defendants aver that the pertinent provisions of the Alabama Act are:

"SECTION 16. Unemployment Administration Fund.—

(a) Special Fund. There is hereby created the 'Unemployment Compensation Administration Fund', to consist of all moneys received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund This special fund shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(b) Federal Aids. All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund. Subdivision C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Compensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred."

[fol. 67] "SECTION 17. Appropriations.—All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment compensation Commission."

"SECTION 9. (b) Salaries.—The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary travelling expense."

These defendants admit that the expense of administration, together with salary of the Chairman and Members of

said Commission and of employees thereof, are now and at all times have been paid from funds allocated to the said Commission under the provisions of the Federal Act; that the amount now being expended by the Alabama Unemployment Compensation Commission from the Federal funds so allocated to it for said purposes under the provisions of the Federal Act is at the rate of approximately $100,000.00 per annum.

The defendants further admit that there has never been actually deposited in the Unemployment Administration Fund, provided for in Section 16 of the Alabama Act, any funds other than funds allotted and provided by the Federal Government for that purpose.

Defendants admit that the amounts allocated and to be allocated to the Alabama Administration Fund are determinable solely by Federal Agencies under the terms of the Federal Act and are made available to the Alabama Commission only as Federal Agencies make them available. Further answering said paragraph eleventh these defendants say that the Federal statute is constitutional, does not control or regulate the purely domestic affairs of the states and particularly that the Social Security Act does not in any way purport to, nor does it, control or regulate either compulsory insurance, pensions, minimum wages or relation-
[fol. 68] ships between employers and employees. The exactions of the Federal Act upon employers and employees are federal taxes and are not by the statute earmarked for the control by Congress of any affair of any state; defendants further answering say that the Federal Act does not seek to deprive employers and employees of their liberty to contract nor does it interfere with their free control of the details of their personal business and personal conduct. The Federal Act only sets up certain conditions under which employers may be allowed credit for their contributions to an Unemployment Insurance Fund under such Act as the individual states may enact, containing certain definitely fixed identifying details as prescribed by the Federal Act.

12th. For answer to the twelfth paragraph of the Bill of Complaint as amended the defendants specifically deny separately and severally every averment, statement and legal conclusion therein contained. Defendants further aver that the Alabama Act was duly and properly enacted by the Legislature of the State of Alabama and duly and properly

approved by the Governor of the State of Alabama in lawful, constitutional, and proper exercise of the reserved police power of the soverign State of Alabama, and that no provision thereof violates any provision of the Constitution of the United States. Further answering, defendants aver that any statements or averments contained therein with respect to any employer or employee other than the particular plaintiff herein itself are irrelevant and immaterial in this suit.

Further answering the bill of complaint as amended defendants say that there is no singling out of the plaintiff [fol. 69] and others similarly situated, but that under the terms of the State Act, as well as the Federal Act, burdens and responsibilities are fixed generally upon all employers in industry, throughout the State and nation, from which the evils of unemployment have been shown by common experience known to all to have arisen; that for the successful operation of any plan of unemployment compensation the base upon which the necessary reserves are made to rest must be sufficiently broad to embrace substantially all employers whose industry substantially contributes to the unemployment problem.

13th. For answer to the thirteenth paragraph of the bill of Complaint as last amended the defendants specifically deny each and every averment, statement and legal conclusion therein contained. Further answering, the defendants say that the Alabama Act, and the amendments thereto, were duly and properly enacted by the Legislature of Alabama and duly and properly approved by the Governor of Alabama in proper constitutional and legal exercise of the reserved police power of the Sovereign State of Alabama and that no provision of such act, as amended, violates any provision of the Constitution of the State of Alabama. Further answering, the defendants say that any averments or statements contained therein with respect to any rights of others or of any other employers and employees or the employees of the plaintiff are immaterial and irrelevant to the issues in this proceeding.

14th. For answer to the fourteenth paragraph of the bill of complaint as amended the defendants deny the averments thereof, and further say that any averment or speculation in reference to the reason or reasons why the Alabama Act

was adopted by the Legislature of Alabama is wholly immaterial and irrelevant.

[fol. 70] 15th. For answer to the fifteenth paragraph of the Bill of Complaint as amended, the defendants deny all of the allegations thereof, save only as hereinafter appears.

Further answering, defendants say that the averments thereof relative to the motive and object of the Federal Congress in enacting Title IX of the Federal Act is not a subject of inquiry in any court of law or equity. Defendants specifically deny that the provisions of said Title IX were enacted to coerce and force any state and specifically the State of Alabama to adopt laws conforming to the will of Congress as to what is the suitable legislation upon this subject; and they deny that the enactment of said Title IX deprives the State of Alabama of its fredom of action in determining for itself what laws are necessary and desirable within its borders concerning the subject of unemployment compensation. Defendants deny that the Legislature of Alabama was in fact coerced in the enactment of the Alabama Act. They admit that Section 5½ of the Alabama Act, set out in said paragraph, and attached to the Bill of Complaint as amended as an exhibit thereto, was enacted by the Legislature of Alabama and approved by the Governor of said State, as therein alleged.

16th. For answer to the sixteenth paragraph of the Bill of Complaint as amended the defendants deny the allegation thereof that there are not adequate provisions for return and refund of contributions required of this plaintiff and its employees in the event the Alabama Act is declared unconstitutional and void. As a part of their answer to this paragraph, the defendants specifically refer to Paragraphs 5½ of the Act, exhibited to the Bill of Complaint as amended, and *they further say* that upon inquiry made by the Attorney General of Alabama to the Secretary of the Treasury of the United States, as to the construction by that Department of the Federal Act insofar as is concerned any provision for the refund of moneys deposited under the Alabama Act in the Unemployment Trust Fund provided for by the Federal Act, in the event that the Alabama Act be held [fol. 71] unconstitutional or invalid, that said Secretary of the Treasury forwarded to said Attorney General two rulings of said Department, addressed to the Attorney General of New York and to the Attorney General of California; and

advised the Attorney General of Alabama that the said rulings so made represented the views of the Secretary of the Treasury; and that action would be taken, in the event that the contingency arose, as outlined therein.

The two rulings of the said Secretary of the Treasury are as follows:

"The Secretary of the Treasury

Washington

April 22, 1936.

MY DEAR ATTORNEY GENERAL:

I acknowledge receipt of your letter of April 16, 1936, in which you inquire the views of this Department concerning the disposition of funds deposited in the Unemployment Trust Fund representing contributions by employers in the State of New York in the event that the United States Supreme Court should reverse the decision of the New York Court of Appeals sustaining the validity of the New York Unemployment Insurance Act.

It is the view of this Department that the money in the Unemployment Trust Fund standing to the credit of a State agency is and will at all times remain the equitable property of the State or Agency in question. The Treasury Department, in accordance with its interpretation of the law, will under all circumstances honor requisitions duly made by any State agency, to the extent of any balance standing to its credit in the fund.

If the New York State Unemployment Insurance Act should finally be adjudged invalid, this would not in my opinion deprive the State of New York of its equitable interest in the Unemployment Trust Fund. The question how and by whom the money could then be 'duly' requisitioned appears to be primarily a question of state law. Upon satisfactory evidence of the authority of the State Industrial Commissioner to withdraw the money in that contingency, and subject to necessary procedural requirements, I should be prepared to honor a requisition for the full amount standing in the Unemployment Trust Fund to the credit of the State Agency.

Very truly yours, Wayne C. Taylor, Acting Secretary of the Treasury."

[fol. 72] "The Secretary of the Treasury

Washington

June 18, 1936.

DEAR SIRS:

Receipt is acknowledged of your letter of June 4, 1936, referring further to the withdrawal of contributions deposited by the State of California in the Unemployment Trust Fund established by Section 904 of the Social Security Act, in the event said Act should be declared unconstitutional at some subsequent date.

I regret exceedingly that our letter of May 28 did not contain a copy of the letter of April 22, addressed to the Attorney General of the State of New York on the same subject. You will find a copy of that letter enclosed herewith.

Thank you for the information relative to Section 2 of the California Act as passed by the 1935 Session of your legislature. In view of the fact that the California Act would automatically become inoperative in the event of the invalidation of Title IX of the Social Security Act, you may be assured that this Department would honor a requisition duly made by the State Agency to the extent of any balance standing to its credit in the fund.

Very truly yours, Josephine Roche, Acting Secretary of the Treasury."

These defendants further allege that, in view of the departmental rulings hereinabove set out and in view of the provisions of the laws of the State of Alabama, in the event the Alabama Act is declared invalid or unconstitutional by the Supreme Court of Alabama or by the Supreme Court of the United States, that the contributions exacted of the plaintiff and its employees may be refunded to it and to them.

Defendants admit that, insofar as they are informed, no suit is now pending before the Supreme Court of the United States to determine the validity of Titles III or IX of the Federal Act; but they deny that it may reasonably be expected that three years will expire before the Supreme Court of the United States will finally decide the constitutionality or validity thereof. They say that they reasonably expect that the constitutionality of Titles III and IX of the Federal Act will be finally determined by the Supreme Court of the

United States long before any of the contributions exacted [fol. 73] of plaintiff and its employees and to be deposited in the Unemployment Trust Fund provided by the Federal Act, may be paid out as benefits to unemployed persons as is provided for by the Alabama Act; and they therefore aver that the probability is great that a final adjudication upon the validity of the said Titles of the Federal Act, and of the Alabama Act, will be made long before any withdrawals or expenditures of said contributions may be legally made, and at a time when, if either of said laws is held invalid, the contributions will be intact and immediately available for refund as provided by the law.

The defendants deny that in determining the question presented as to the validity and constitutionality of the Alabama Act under the Constitution of the United States and under the Constitution of the State of Alabama it is necessary to construe the provisions of the Federal Act and to determine whether Titles III and IX of the Federal Act are constitutional. They deny that either or both of said titles of the Federal Act are unconstitutional as being repugnant to the Constitution of the United States in any of the particulars alleged in said paragraph, or in any other particular.

17. For answer to the seventeenth paragraph of the Bill of Complaint as amended, the defendants deny that the Federal Act is designed to regulate in an unconstitutional manner matters concerning the life, liberty and property of citizens of the United States; and they deny that the taxes levied by the Federal Act are mere exactions in an attempt, through the taxing power of the Congress, to regulate concerns over which the United States has no control.

They allege, however, that constitutionality vel non of the said Federal Act is not properly before this Honorable Court, and that a decision thereon is not necessary to the issues raised in this suit.

18th. Defendants deny all of the allegations of the eighteenth paragraph of the Bill of Complaint as amended relative to irreparable injury to the plaintiff; and all of [fol. 74] the allegations thereof that the plaintiff has no adequate remedy at law, unless the injunctions prayed for in said suit are granted.

And defendants specifically deny all of the allegations of Sub-paragraph (a), Subsections 1, 2, 3, 4 and 5 thereof; and

further say that the allegations of the said Sub-paragraph and Subsections are mere conclusions of law or of fact.

Answering Sub-paragraph (b), and the several Subsections thereof, defendants admit that if the plaintiff refuses to pay the contributions as required by the Alabama Act, it will submit itself to proceedings by the defendants, as provided by the said Act for the collection of the contributions thereby provided.

It denies that, as yet, the defendants have undertaken to have imposed any fine or imprisonment for violation of any provision of the Alabama Act for which a penalty is not thereby expressly provided. They admit, however, that in the event that plaintiff had refused to pay said contributions, as required by the Act, that they would perform the duties imposes upon them by the said Act.

The defendants neither admit nor deny the allegations of Subsection 4 of said Sub-paragraph (b); but they aver that under the circumstances detailed, the Alabama Unemployment Commission would not be authorized to certify to the Secretary of the Treasury of the United States that plaintiff had complied with the provisions of the Alabama Act.

They deny that under the circumstances detailed, plaintiff would be harassed and put to large expense in the defense of an unseemly multiplicity of suits in the attempt to collect the contributions provided by the Alabama Act or by the Federal Act.

In answering Sub-paragraph (c), and the several Subsections thereof, the defendants deny that the Alabama Act provides no remedy for the recovery of any such amount, in the event it be judicially ascertained by a court of final resort that the plaintiff is entitled to refund of said contributions paid. For further answer to said Sub-paragraph and the several subsections thereof, the defendants adopt all of the allegations of their answer hereinabove contained in Paragraph 16 hereof.

[fol. 75] 19th. The defendants admit that there are a large number of employers of eight or more employees in Alabama who come within the provisions of the Alabama Act and of the Federal Act. But defendants deny that the general interest, alleged in the ninteenth paragraph of the

Bill of Complaint as amended, of the other employers of labor, is such as authorizes the plaintiff in this cause to sue for and on behalf of the said alleged class.

20th. Answering the twentieth par-graph of the Bill of Complaint as amended, defendants aver that even if many suits are filed by employers of eight or more persons, similar to this suit, that the alleged multiplicity of suits is not a matter of which this plaintiff may complain, and that the alleged multiplicity of suits is no ground for equitable interference insofar as this plaintiff is concerned.

21st. Answering the twenty-first paragraph, defendants say that they have made known to plaintiff and to all other employers of labor in Alabama that they will perform all of the duties imposed upon them by the Alabama Act; but they deny that unless the injunctions prayed for in the Bill of Complaint as amended are granted that the acts of these defendants in the performance of their duties under the Alabama Act will work irreparable injury upon this plaintiff.

And now, having fully answered the Bill of Complaint as amended in said cause and all of the charges and allegations therein contained, these defendants pray that it be ordered, adjudged and decreed by the court that the plaintiff is not entitled to the relief sought in this Bill of Complaint as amended, and that these defendants may go hence with their legal costs in this behalf expended.

A. A. Carmichael, Attorney General of Alabama; Chas. L. Rowe, Assistant Attorney General of Alabama; Peyton D. Bibb, Assistant Attorney General of Alabama; Inge & Stallworth, Attorneys for the Defendants.

[File endorsement omitted.]

[fol. 76] *Duly sworn to by Albert A. Carmichael. Jurat omitted in printing.*

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO SUBMISSION, etc.—Filed November 18, 1936

It is agreed that the plaintiff's application for an interlocutory injunction as prayed for in its amended bill of complaint shall be submitted to the Statutory Court upon:

A. The Bill of Complaint as amended;

B. The orders of the District Judge or Court which have been made or may be made in the case prior to submission;

C. Proof of Service and notice given of such papers as have been served and such notices as have been given.

D. Defendant's motion to dismiss.

E. Defendant's answer.

F. The written affidavits of plaintiff not to exceed 12 in number, the originals to be filed with copies to be furnished to the Attorneys for the Defendants not later than the 7th day of November, 1936, with the further understanding that said affidavits shall be approximately in substance and in length as are the copies of affidavits which have been submitted to attorneys for the defendants contemporaneously herewith.

G. The written affidavits of defendants not to exceed 12 in number and to be filed in court with copies to be furnished to attorneys for plaintiff, not later than the 16th day of November 1936. Said affidavits to be in rebuttal of the affidavits of plaintiff and in proof of the averments of the answer.

It is further agreed and understood that such affidavits shall be considered by the court as if affiants had appeared and testified personally with the further provision that only such portions of said affidavits shall be considered by the court as may be material, relevant and competent herein, and that neither party admits the truth of the matters contained in the affidavits offered by the opposing party.

It is also agreed by the parties, without plaintiff waving insistance on its said application for an interlocutory injunction that said case will be submitted for final decree upon the same pleadings and evidence as above set forth and noted for the submission of the application for the interlocutory injunction.

Dated this 2nd day of November, 1936.

Borden Burr, Neil P. Sterne, Marion Rushton, Attorneys for Plaintiff. A. A. Carmichael, Attorney for Defendants.

[File endorsement omitted.]

[fol. 78] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION—Filed November 18, 1936

This matter coming on for hearing that upon application of plaintiff for a temporary injunction, and the same having been submitted upon the sworn allegations of the bill, and upon testimony offered and noted in open court,

And the court being of the opinion and finding that plaintiff is entitled to a temporary injunction as prayed for in the original bill,

It is, therefore, Ordered and Decreed as follows:

That an injunction to remain in effect until final decree herein be and the same is hereby granted, ordered and issued the plaintiff upon the same terms and upon the same conditions as the temporary restraining order issued herein by the Honorable C. B. Kennamer, Judge of the District Court with the following exceptions and additions:

a. The expiration date of this temporary injunction shall be the date of final decree in the above entitled proceedings.

b. The Attorney General of Alabama, as counsel of record for the defendants, in open court consenting it is ordered that all payments made to the First National Bank of Montgomery, Alabama, as designated depository of this court in accordance with the terms of temporary order or orders

heretofore granted herein and all such payments hereafter made in accordance with either the said temporary order or orders or this temporary injunction, or any permanent injunction which may issue herein, shall be regarded and shall stand as payments to or for the account of the Alabama Unemployment Compensation Commission in such wise as to authorize certification by the Alabama Unemployment [fol. 79]Compensation Commission of the payment of such sums for credit under Title IX of the Federal Social Security Act, but without prejudice to all parties in the matter, and subject to such further or supplemental orders as may be rendered herein.

Dated at Montgomery, Alabama, this 18th day of November, 1936.

(Signed) Samuel H. Sibley, Robert T. Ervin, C. B. Kennamer.

[File endorsement omitted.]

[fol. 80] In United States District Court

[Title omitted]

Stipulation as to Evidence—Filed January 20, 1937

It is hereby stipulated and agreed between counsel for plaintiff and defendants in the above styled cause that a full, true and correct statement of the evidence in said cause, under Equity Rule 75, consists of the following:

1. The affidavits introduced in evidence by plaintiff being the affidavits of Joseph Halfpenny, Allen Little, W. W. Fulgham, George F. Peter, A. R. Forsyth, H. D. Warner, Herbert S. Craigmile, Richard H. Childers, Alex C. Wilman, Herbert S. Salmon and J. M. Jackson, Jr.,

2. The affidavits introduced in evidence by the defendants being the affidavits of F. W. Gist, J. L. Kaufman and Peyton D. Bibb.

3. The verified bill of complaint as last amended filed herein and treated as an affidavit in evidence.

4. The verified answer of the defendants filed in this cause (and treated as an affidavit in evidence).

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special [fol. 81] Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama; Attorneys for the Defendants. Borden Burr, Birmingham, Alabama; Neil P. Sterne, Anniston, Alabama; Marion Rushton, Montgomery, Alabama, Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

ORDER

The foregoing stipulation and the Statement of Evidence as therein stipulated is approved as a true, complete and properly prepared statement of the evidence at the trial of this cause, and may be filed in the clerk's office, and become a part of the record.

This, the 20th day of January, 1937.

Samuel H. Sibley, Circuit Judge; Robert T. Ervin, District Judge; Chas. B. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 82] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOSEPH HALFPENNY—Filed November 17, 1936

STATE OF ALABAMA:

Before me, the undersigned authority for said county in said state, personally appeared Joseph Halfpenny who, being duly sworn, deposes and says:

Statement as to Qualifications and Sources and Bases of Statistical Conclusions

I am and have been for the past ten years engaged in the profession of statistician. I have taken complete courses in statistical methods. For approximately seven years I was Assistant Chief of the Bureau of Statistics of a large industrial concern. My business for the last ten years has been mainly connected with statistical researches and conclusions and economic surveys.

[fol. 83] I have made statistical researches and surveys in connection with matters arising under the Alabama Unemployment Compensation Statutes as hereinafter more fully referred to.

Attached to this affidavit and identified as the appropriately lettered exhibits are certain tables which present the statistical status of certain matters therein designated. In each instance the tables have been compiled by me or under my supervision, and, in my opinion as a statistician, they are substantially correct and present a substantially accurate presentation of the situations dealt with. In producing these tables I have used as the bases Census findings as published by the United States Bureau of Census and certain supplemental surveys and studies of the Census Bureau, I have also used statistical publications of the United States Bureau of Labor. In each instance the bases used by me has or have been the official publication or publications of one or the other of the governmental agencies above referred to. In a number of the tables the Census figures for the year 1930, dealing with volume of employment and similar matters are used. There has, of course,

been no complete Census since 1930, and this is the last year for which comprehensive figures dealing with all the matters mentioned are available.

I am, however, in position to express, as an ascertained fact, that the levels and volumes of employment in the State of Alabama as they existed in the year 1930 were practically the same as they exist at the present time, except that there has been a substantial increase in the number of persons [fol. 84] employed in agriculture, the increase as indicated by Government Surveys being approximately 20%. There are kept by me continuous and progressive studies of fluctuations in respect of these matters, and from these studies, with all of which I have continuous familiarity, I have knowledge that the volume of employment existing in Alabama at the present time is approximately the same as for the year 1930; that is to say, the figures of employment and cognate matters for the year 1930 we know, from our statistical studies, to be the figures existing at the present time with the various pluses or minuses being only in minor percentages not sufficient in any way to affect the general trends therein shown. It should, therefore, be understood that wherever 1930 figures are given unless I have indicated to the contrary, substantially the same figures, the same percentages and the same statistical situation exist in the State of Alabama as of the present time.

Comments and Explanations as to Table "A"

Table hereto attached, designated as "A" shows as of the census year 1930 (known to closely approximate the statistical situation as of the present time) several groupings of employment as affected by, or excluded from, the operation of the Alabama Unemployment Compensation Act. The figure therein shown as grand total, 1,026,320, is the total number of persons gainfully employed, subdivided into those employed in the various occupations which are not exempt from the Act, the latter being shown in Column "A" by occupational groups, the total being 377,575.

[fol. 85] In Column "E" are shown by occupational groups the number of persons employed in the industries or lines of activity exempted from the Act, the total being 648,745.

Column "B" shows the workers in non-exempt industries as reported by industries in the 1930 census.

The margin of difference between the occupation census and reported by industries is approximately what is to be expected from statistical experience in matters of this nature.

Column "C" shows the employees of establishments which are in lines of business not exempted from the operation of the statute, but which establishments employ each less than eight persons, and also includes firm members and proprietors, It should be explained that the figures used in Column "C" are an estimated conclusion derived from the other figures given and from economic experience and test surveys, the variation in the figures used in Column "C" however, would not exceed five percent either way.

Column "D" shows the number of employees excluded neither by exemption nor by minimitude of personnel,—that is to say, the number of employees covered by the Act, and is derived by deducting the figures in Column "C" from the figures in Column "A".

Comments and Explanations as to Table "B"

Table hereto attached, designated as "B" shows the persons gainfully employed in Alabama by major occupational [fol. 86] groupings for the year 1930, the percentages represented by the said figures, and the comparative percentages for the United States as a whole. The occupational figures given in Table "B" are in groupings as shown by the census publications. Wherever the classification is the same as the classification in Table "A" the figures are the same, there being, however, more detailed break-downs in "A" than in "B".

Comments and Explanations as to Table "C"

Table hereto attached and designated as "C" presents a calculation of the revenue which will be produced by the Alabama Act, assuming a level of employment for the years 1936, 1937 and 1938 paralleling the year 1930. As heretofore explained comparative surveys and researches establish that the figures at the present time parallel the 1930 figures. For 1937 and 1938 the volume of wage increment is, of course, a matter of prediction. The figures shown for the years 1937 and 1938 are the revenues which will be produced under the Alabama Statutes for those years, if the

wage increment for said years be the same as for 1930. The statutory rates are used for the periods in which the Act was an- will be effective in the current year, that is to say, as to employer contributions for the entire year and as to employee contributions for the last eight months of the year. The 1937 and 1938 figures shown in the table are for the entire year, (on an increasing scale as to employer contributions). The pay roll increments are derived by applying to total employment as disclosed in the census average earnings as ascertained by the census.

[fol. 87] Comments and Explanations as to Table "D"

Table hereto attached designated "D" shows in the case of wage earners and salaried employees comparatively the earnings at the several recognized rates of pay, the contributions made by employee and employer on account of the amount so earned, and the total maximum benefits which the employee would draw, assuming that he was unemployed for the greatest length of time compensible, and under the conditions most favorable to the drawing of maximum compensation; that is to say, assuming maximum unemployment to set in at the earliest time which qualifies for participation in the benefits provided by the Act.

In the table the hourly rates are set forth in accordance with the recognized gradations of earnings as to the wage class and the recognized major gradations of earnings as to the salaried employees, the highest wage bracket used being one dollar per hour and the highest salary bracket used being twenty-thousand dollars per annum.

[fol. 88] Statement as to Non-Existence of Surveys or Researches in Respect of Present, Past or Anticipated Incidence of Unemployment

I am familiar with all industrial economic surveys and researches which have been made in the State of Alabama within the last ten years or which have been at any time within the last ten years available in Alabama. No such data showing any general unemployment experience, absolute or proportional, have ever existed in Alabama, except that the Census of 1930 showed unemployment figures as of April first and November first of that year. However there being no figures previous or subsequent to show flow

and trend, and therefore, no competent average or competent tendency being determined or determinable, the State of Alabama is without any basis upon which to calculate or estimate unemployment probably to be anticipated even under the prevalence of normal conditions. Therefore, there are no statistical data from which the adequacy either of rates or contributions or rates of benefits could be determined.

I am unable to express an opinion as to whether rates of contribution and rates of benefits provided by the Alabama Act are too high or too low, and from the knowledge I have of the principles of statistical method I am in position to state that no other statistician and no economist could reach such a conclusion, there being an utter lack of base. Both the rates of contributions and the rates of benefits are neces- [fol. 89] sarily determined arbitrarily and without guide of standard.

The figures set forth in the various tables I have appended deal with known employment and known or ascertainable earnings. In this field we have affirmative figures. In the field of unemployment there has been no study, survey or compilation, and in the absence of such production of data, unemployment, existing and anticipated, contributions necessary to create adequate unemployment compensation, and the amounts which would be adequate compensation must necessarily remain neither known nor susceptible of estimation nor susceptible of being fixed except at arbitrarily selected figures.

This statement does not mean to suggest that individual plants could not, by analysis of their records and supplemented by investigation of representative groups leaving the service, arrive at an approximate constructive application of the Act applied to past years; but relatively few, if any, plants in the State can supply that information from records hitherto maintained and no reports for such information have heretofore been called for by public authority, State or Federal. Nor have there been any public hearings or testimony relating to the matter by any public or legislative authority in Alabama.

In short, as to employer and employe in the aggregate subject to the Act, there is involved not only a complete lack of statistics but absolutely incalculable variables as to the benefits which might be claimed under the operation of the Act.

[fol. 90] Actuarial Factors in State Unemployment Compensation Plan Prepared by Social Security Board, Washington, D. C., January, 1936

I am attaching hereto designated as "Exhibit E" a copy of a statement prepared and issued in January, 1936 by the Social Security Board of Washington, D. C. and entitled "Actuarial Factors in State Unemployment Compensation Plan (based upon standards of suggested Unemployment Compensation Bill prepared by Social Security Board, Washington, D. C., January, 1936)[1].

Industrial Activity in Alabama

I am attaching hereto designated as Exhibit F, extract from University of Alabama Business News for February 1st, 1936 and October 1st, 1936. This indicates that business activity in Alabama as shown by composite index, in August 1936 is substantially the same as in 1930.

J. Halfpenny.

Subscribed and sworn to before me this 4th day of November, 1936. Sudie S. Bates, Notary Public. (Seal.)

[fol. 91]

Table "A" to Affidavit

State of Alabama

Estimated Number of Employees Subject to the Unemployment Compensation Law Based on 1930 Census

Industries (Not exempt under Act)	A Total Employed Census of Population	B Total Employees Census of Industries	C Estimated and Reported Small Firms & Others Not Subject to Act	D Employees Subject to Act A minus C	D % of Column A
Manufacturing	150,858	133,551	27,225	123,633	81.95
Trade	81,279	87,850	25,440	55,839	68.70
Mining	34,959	33,781	1,400	33,559	95.99
Personal Service	26,710	.....	9,733	16,977	63.56
Building & Constr.	33,145	9,916	18,101	15,044	45.39
Transport & Communication	18,822	.....	7,581	11,241	59.72
Professional	10,097	.....	3,680	6,417	63.55
Forestry	5,169	.....	1,884	3,285	63.55
Miscellaneous	16,536	.....	7,356	9,180	55.51
Total	377,575	265,098	102,400	275,175	72.88

Industries (Exempted by Act)	E
Agriculture	492,818
Domestic Service	73,519
Steam Railroads & Water Transportation	26,178
Non-Profit Services	23,318
Professional Service	7,475
Public Service	10,782
Postal Service	3,846
Banking & Insurance	4,855
Miscellaneous	5,954
Total	648,745
Grand Total	1,026,320

Source: 15th Census U. S.
10/14/36

Summary:

		%
Persons gainfully employed	1,026,320	=100.00
Employees subject to Act	275,175	= 26.81
Employees non-exempt Industries	377,575	=100.00
Employees subject to Act	275,175	= 72.88

[fol. 92] TABLE "B" TO AFFIDAVIT

Total Persons Gainfully Employed in Alabama by Occupation

	1930	Percentages Alabama 1930	U.S. 1930
All Persons—			
Agriculture	492,818	48.01	21.47
Forestry and Fishing	6,064	0.59	0.55
Extraction of Minerals	34,959	3.41	2.37
Manufacturing	185,419	18.07	29.32
Transportation	57,745	5.63	9.09
Trade	86,134	8.39	15.43
Public Service	10,782	1.05	2.17
Professional Service	40,890	3.98	7.02
Domestic & Personal Service	100,229	9.77	9.85
Industry Not Specified	11,280	1.10	2.73
Total	1,026,320	100.00	100.00

Source U. S. Census
10/14/36

[fol. 93] TABLE "C" TO AFFIDAVIT

State of Alabama

Calculation of Revenue from Levies of Unemployment Compensation Law on Basis of 1930

Industry	0.9% Employer(a) 1.0% Employees(b) 1936	1.8% Employer 1.0% Employees 1937	2.7% Employers 1.0% Employees 1938
Manufacturing	1,770,124	3,150,888	4,163,673
Trade	717,591	1,277,339	1,687,913
Mines and Quarries	528,828	941,334	1,243,905
Construction	217,436	387,045	511,452
Miscellaneous	65,983	117,452	155,205
Total	3,299,962	5,874,058	7,762,148

(a) Levy for 12 months.
(b) Levy for 8 months.

Source 15th Census U. S.
10/14/36

[fol. 94]

Table "D" to Affidavit

Status of Employees in Day Rate and Salary Groups Regularly Employed from May 1st, 1936, to December 31st, 1935, and Then Becoming Totally Unemployed on January 1st, 1938, and Qualified to Receive Compensation

Showing Rate of Earnings and Contribution of Employees to Fund, Also Contribution of Employers to Fund, Together with Maximum Benefits

Occupation	Rate Per Hour	Earnings Week 40 hr.	Employees 1% to Dec. 31, '37	Company .9% '36 1.8% '37 12/31/37	Total Employee and Company	50% Wage Max. $15.00 16 Weeks	Additional Benefit 1.15 Wks.	Total
Unskilled:								
Com. Labor	.25	10.00	8.70	14.04	22.74	80.00	5.75	85.75
Occup. Lab.	.30	12.00	10.44	16.85	27.29	96.00	6.90	102.90
Gen. Helpers	.35	14.00	12.18	19.65	31.83	112.00	8.05	120.05
Semi-skilled:								
Craft Helpers	.40	16.00	13.92	22.47	36.39	128.00	9.20	137.20
Apprentices	.45	18.00	15.66	25.27	40.93	144.00	10.35	154.35
Handymen	.50	20.00	17.40	28.08	45.48	160.00	11.50	171.50
Skilled:								
Craftsmen	.55	22.00	19.14	30.89	50.03	176.00	12.65	188.65
Craftsmen	.60	24.00	20.88	33.69	54.57	192.00	13.80	205.80
Craftsmen	.65	26.00	22.62	36.51	59.13	208.00	14.95	222.95
Journeymen	.70	28.00	24.36	39.31	63.67	224.00	16.10	240.10
Journeymen	.75	30.00	26.10	42.12	68.22	240.00	17.25	257.25
Journeymen	.80	32.00	27.84	44.93	72.77	240.00	17.25	257.25
Journeymen	.90	36.00	31.32	50.56	81.88	240.00	17.25	257.25
Journeymen	1.00	40.00	34.80	56.16	90.96	240.00	17.25	257.25

Salaried:	Amount Per Year							
Salary	1,500.00	28.85	25.10	40.50	65.60	240.00	17.25	257.25
Salary	2,000.00	38.46	33.46	54.00	87.45	240.00	17.25	257.25
Salary	2,500.00	48.08	44.83	67.50	109.33	240.00	17.25	257.25
Salary	3,000.00	57.69	50.19	81.00	131.19	240.00	17.25	257.25
Salary	3,500.00	67.31	58.56	94.50	153.06	240.00	17.25	257.25
Salary	4,000.00	76.92	66.92	108.00	174.92	240.00	17.25	257.25
Salary	5,000.00	96.15	83.65	135.00	218.65	240.00	17.25	257.25
Salary	6,000.00	115.38	100.38	162.00	262.38	240.00	17.25	257.25
Salary	7,500.00	144.23	135.08	202.50	327.98	240.00	17.25	257.25
Salary	10,000.00	192.31	167.31	270.00	437.31	240.00	17.25	257.25
Salary	15,000.00	288.46	250.96	405.00	655.96	240.00	17.25	257.25
Salary	20,000.00	384.62	334.62	540.00	874.62	240.00	17.25	257.25

10/14/36

[fol. 95] EXHIBIT "E" TO AFFIDAVIT

Actuarial Factors in State Unemployment Compensation Plans (Based Upon Standards of the Suggested Unemployment Compensation Bill), Prepared by Social Security Board, Washington, D. C., January, 1936

[fol. 96] Actuarial Factors in State Unemployment Compensation Plans

Introduction

This memorandum has been prepared as an aid to the States in estimating the probable number of workers that will be covered by the Federal excise tax upon employers, the probable income that will be contributed, the possible effect of different waiting periods and of different rates of contributions, and the possible maximum duration of benefits that can be paid to the compensable labor force if the standards in the suggested State bill are followed.

With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to estimate the benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State statistics on the unemployment problem makes such calculations for individual States very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for administration purposes when the plan goes into effect and these records will furnish some data which

should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein.

[fol. 97] Coverage

The coverage of the suggested State unemployment compensation bill includes all gainful workers employed in private establishments employing eight or more employees within at least twenty weeks in a calendar year. This, of course excludes the self-employed-farmers, farm tenants, unpaid farm helpers, independent hand tradesmen, professional people, owners, proprietors, and independent operators. The following employments are also exempted from the Federal tax: (1) agricultural labor; (2) domestic service in a private home; (3) employment on vessels on navigable waters; (4) employment of family members; (5) Federal employment; (6) employment by States or political subdivisions thereof; and (7) employment by religious, charitable scientific, literary, educational, and humane nonprofit organizations. The States will probably wish to follow this coverage fairly closely.[1]

Table I shows a rough approximation of the number of gainful workers who would have been covered in April, 1930, by a plan with the Federal coverage, had one been in operation for some years.

---

[1] State and local Government employees were exempted from the Federal tax because the Federal Government cannot tax State or local governments. Employees of State and local Governments might well be covered except those on Governmental relief projects, elected or appointed public officers, government employees on an annual salary basis, and teachers in public schools, colleges, and universities. The State is also free to cover other employments exempted by the Federal tax except Federal employees and employees on vessels on navigable waters. It may also include employers of fewer than eight employees. The California, New Hampshire, New York, Utah, and Washington acts cover employers of four or more persons for thirteen or more weeks. The estimates in this memorandum, however, include only employees covered by the Federal tax.

These figures indicate the total number of workers (the employed plus the unemployed) who would have come within the scope of the plan at that date. If adjusted upward to account for natural growth of the working population, they would represent the maximum number of gainful workers who could be covered by the plan in the various State at any time.

The proportion of gainful workers that would have been covered by the plan varies considerably from State to State and from the National average, as may be seen in Table I. Massachusetts and Rhode Island would have had a maximum of about 56 per cent of their gainful workers covered in contrast to Mississippi which would have had only about 20 per cent of its workers participating in the plan. These variations exist because of differences in the industrial make-up of the States. States having a large agricultural population, for example, would have a smaller proportion covered than would States whose populations are primarily engaged in the manufacturing industries.

[fol. 98]

Table I.—Estimated Coverage of Assumed Unemployment Compensation System, by States, April 1930

State	Gainful workers		Compensable labor force	
	Total	Non-agricultural	Number	Percent of total gainful workers
		(In thousands)		
United States	48,833	38,505	22,279	45.6
Alabama	1,026	540	312	30.4
Arizona	165	127	73	44.2
Arkansas	668	283	164	24.6
California	2,501	2,189	1,267	50.7
Colorado	403	297	172	42.7
Connecticut	677	643	372	54.9
Delaware	98	81	47	47.9
District of Columbia	244	243	112	46.0
Florida	599	469	271	45.2
Georgia	1,162	660	382	32.9
Idaho	162	96	56	34.5
Illinois	3,185	2,843	1,645	51.7
Indiana	1,251	1,003	580	46.4
Iowa	913	583	337	36.9
Kansas	694	466	270	38.9
Kentucky	907	553	320	35.3
Louisiana	816	521	301	36.9
Maine	309	258	149	48.3
Maryland	673	590	341	50.7
Massachusetts	1,814	1,762	1,019	56.2
Michigan	1,927	1,691	978	50.7
Minnesota	993	691	400	40.3
Mississippi	845	294	170	20.1
Missouri	1,458	1,089	630	43.2

Table 1—Estimated Coverage of Assumed Unemployment Compensation System by States, April 1930—Continued

State	Gainful workers		Compensable labor force	
	Total	Non-agricultural	Number	Percent of total gainful workers
	(In thousands)			
Montana	216	137	79	36.5
Nebraska	507	310	179	35.3
Nevada	43	34	20	46.6
New Hampshire	193	171	99	51.4
New Jersey	1,712	1,657	959	56.0
New Mexico	143	85	49	34.3
New York	5,523	5,279	3,084	55.8
North Carolina	1,141	642	371	32.5
North Dakota	240	107	62	25.8
Ohio	2,616	2,311	1,337	51.1
Oklahoma	828	525	304	36.7
Oregon	410	329	190	46.4
Pennsylvania	3,722	3,479	2,013	54.1
Rhode Island	297	289	167	56.2
South Carolina	688	341	197	28.6
South Dakota	248	117	68	27.5
Tennessee	958	587	340	35.5
Texas	2,207	1,374	795	36.0
Utah	170	129	75	44.1
Vermont	141	103	60	42.5
Virginia	880	608	352	40.0
Washington	665	562	325	48.9
West Virginia	570	454	263	46.1
Wisconsin	1,130	841	487	43.1
Wyoming	92	62	36	38.9
			Inclusion ratio—57.86%	

[fol. 99] For a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, see Table II which estimates the size of coverage under a plan assumed to have been initiated in 1933. Employment conditions have since improved somewhat and coverage would consequently be increased slightly. A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan, until the maximum estimated in Table I might be reached, or even exceeded. The speed with which this may happen depends largely upon the swiftness with which recovery takes place.

Employment and Unemployment Statistics by States

In constructing estimates for the use of the States all available statistics on unemployment and employment have been studied. Virtually no data on unemployment by States are available except those in the United States Census of

Unemployment of April, 1930, and a few scattered State or city unemployment censuses or surveys.

The compilation of employment statistics prior to 1930 was very limited. No indexes of general employment are known for these years. Several States published employment indicators of factory employees, representative of the manufacturing industries only, but most of these do not go back beyond the 1920's.

[fol. 100] TABLE II.—Estimated Number of Employed Workers Covered by States, 1933

State	Number of employed Workers covered
United States	14,611,000
Alabama	204,000
Arizona	46,000
Arkansas	89,000
California	900,000
Colorado	109,000
Connecticut	254,000
Delaware	38,000
District of Columbia	110,000
Florida	171,000
Georgia	303,000
Idaho	38,000
Illinois	1,048,000
Indiana	375,000
Iowa	221,000
Kansas	190,000
Kentucky	229,000
Louisiana	202,000
Maine	116,000
Maryland	237,000
Massachusetts	658,000
Michigan	531,000
Minnesota	269,000
Mississippi	107,000
Missouri	419,000
Montana	47,000
Nebraska	120,000
Nevada	12,000
New Hampshire	76,000

State	Number of employed workers covered
New Jersey	591,000
New Mexico	29,000
New York	1,892,000
North Carolina	291,000
North Dakota	42,000
Ohio	894,000
Oklahoma	207,000
Oregon	148,000
Pennsylvania	1,215,000
Rhode Island	106,000
South Carolina	155,000
South Dakota	49,000
Tennessee	244,000
Texas	531,000
Utah	48,000
Vermont	40,000
Virginia	246,000
Washington	222,000
West Virginia	182,000
Wisconsin	335,000
Wyoming	23,000

[fol. 101] During the last four or five years more complete and reliable employment statistics have been gathered. Not only have States recognized the need for such data, but the United States Bureau of Labor Statistics has been compiling National employment indexes month by month, since 1929, for the following industrial groups: manufacturing, wholesale trade, retail trade, mining, transportation, telephone and telegraph, light and power, and hotels. In 1933 the scope of the field covered was enlarged by the addition of real estate, banking, insurance, and canning and preserving industries. Since 1932 these indexes have been broken down by States, resulting in the first comprehensive monthly State indicators of employment.

(Here follow two photos, side folios 102 and 103.)

TABLE [illegible] -- ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

State	Average number of workers in compensable labor force				Average number employed (In thousands)				Average number unemployed				1930-3
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	
United States	22,979	22,319	22,317	22,416	19,104	16,768	14,248	14,611	3,175	5,551	8,069	7,805	72.5
Alabama	312	306	300	295	273	238	194	204	39	68	106	91	74.9
Arizona	73	73	75	76	63	54	47	46	10	19	28	30	70.7
Arkansas	166	160	153	149	145	127	94	89	19	33	58	60	73.7
California	1,387	1,279	1,288	1,303	1,080	950	881	900	287	329	401	403	74.2
Colorado	172	170	171	172	148	131	112	109	24	39	59	63	73.8
Connecticut	392	375	377	380	319	277	230	254	55	98	147	126	71.8
Delaware	47	47	46	47	42	36	33	38	5	11	13	9	79.7
District of Columbia	113	113	113	114	100	90	81	88	13	23	32	26	79.4
Florida	271	273	276	277	233	205	170	171	38	68	104	106	71.1
Georgia	382	371	366	356	339	298	256	303	43	73	110	53	80.9
Idaho	56	54	54	54	49	42	37	38	7	12	17	16	76.2
Illinois	1,445	1,655	1,661	1,670	1,383	1,215	1,014	1,048	262	440	647	622	70.3
Indiana	580	581	577	577	496	433	353	375	86	148	234	203	71.6
Iowa	337	335	332	329	301	266	228	221	36	69	104	108	76.2
Kansas	270	268	267	266	238	210	187	190	32	58	80	76	77.0
Kentucky	320	314	308	308	276	243	215	229	44	71	93	79	77.3
Louisiana	301	301	298	298	261	238	196	202	40	73	102	96	74.0
Maine	149	149	149	149	128	112	99	116	21	37	50	33	78.3
Maryland	341	343	343	344	301	318	234	237	40	26	119	107	73.8
Massachusetts	1,019	1,028	1,030	1,034	866	753	654	658	155	275	376	378	71.3
Michigan	978	989	998	1,008	783	679	553	531	195	310	443	475	64.1
Minnesota	600	599	597	598	545	503	272	269	55	96	125	127	74.7
Mississippi	190	181	153	147	150	132	108	107	30	29	45	40	78.8
Missouri	630	630	627	627	547	481	413	419	83	149	214	208	74.0
Montana	79	78	77	78	67	58	45	47	12	18	32	29	70.5
Nebraska	179	179	179	178	160	142	125	120	19	37	54	58	76.7
Nevada	20	20	20	20	16	14	12	12	4	6	8	8	67.5
New Hampshire	99	100	100	100	85	73	68	76	14	27	33	24	75.7
New Jersey	959	970	980	990	812	735	602	591	147	235	378	399	69.5
New Mexico	49	48	48	48	43	37	31	29	6	11	18	20	71.8
New York	3,084	3,111	3,134	3,159	2,635	2,312	1,950	1,915	449	799	1,184	1,244	70.6
North Carolina	371	369	366	364	320	278	242	291	51	91	124	75	76.8
North Dakota	62	61	59	59	55	49	45	42	7	12	14	17	79.3
Ohio	1,337	1,345	1,346	1,352	1,131	987	826	894	206	358	522	458	71.3
Oklahoma	304	303	300	299	263	227	195	207	41	75	105	92	74.0
Oregon	190	192	193	193	161	142	136	148	29	50	56	45	78.5
Pennsylvania	2,013	2,021	2,028	2,080	1,731	1,509	1,242	1,216	282	512	786	864	70.0
Rhode Island	167	169	170	171	138	120	100	106	29	49	70	65	68.5
South Carolina	197	192	187	183	176	153	129	155	21	44	58	28	80.6
South Dakota	68	67	66	65	62	55	48	49	6	12	17	16	80.8
Tennessee	340	334	329	324	299	282	235	244	41	92	104	80	77.6
Texas	795	798	793	798	698	612	521	531	97	186	271	265	74.2
Utah	75	76	75	75	64	58	48	48	11	18	26	27	72.6
Vermont	60	60	59	59	51	45	40	40	9	15	19	19	71.8
Virginia	353	347	343	339	312	273	231	244	40	74	111	95	76.8
Washington	325	327	327	329	279	245	219	222	46	82	107	107	73.5
West Virginia	293	283	283	284	230	202	174	183	33	61	89	83	74.8
Wisconsin	487	487	484	482	420	366	330	335	67	121	154	147	74.5
Wyoming	36	35	36	36	32	28	23	23	4	7	13	13	74.1

III... ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

Average number employed (In thousands)				Average number unemployed				Percent of compensable labor force									
								Salary					Wage				
1930	1931	1932	1933	1930	1931	1932	1933	1930-33	1930	1931	1932	1933	1930-33	1930	1931	1932	1933
19,104	16,768	14,248	14,611	3,175	5,551	8,049	7,805	12.5	85.7	75.1	63.8	66.3	27.5	14.3	24.9	36.2	34.8
273	238	196	204	39	68	106	91	24.9	87.5	77.8	66.7	69.8	25.1	12.5	22.2	33.3	30.8
63	54	47	46	10	19	28	30	30.7	84.3	74.8	62.7	60.5	29.3	15.7	26.0	37.3	39.5
145	129	96	89	19	33	58	60	22.7	88.4	79.4	61.4	59.7	27.3	11.6	20.6	38.6	40.3
1,080	950	881	900	187	329	401	403	24.2	85.2	74.3	68.4	69.1	25.8	14.8	25.7	31.6	30.9
148	131	112	109	26	39	59	63	23.0	86.0	77.1	65.5	63.4	27.0	14.0	22.9	34.5	36.6
319	277	230	234	53	98	149	126	21.8	85.8	73.9	61.0	64.8	28.2	14.2	26.1	29.6	13.2
42	36	33	38	5	11	13	9	29.7	88.4	78.3	71.7	80.0	28.3	10.6	21.6	28.3	19.1
100	90	81	88	13	23	32	26	29.4	89.3	79.6	71.7	77.3	28.6	10.7	20.4	28.3	22.7
233	205	170	171	38	68	106	108	31.1	86.8	73.1	62.0	61.7	28.9	14.0	26.9	38.0	38.3
339	296	256	303	43	75	110	53	20.9	88.7	79.8	69.9	85.1	29.1	11.3	20.2	30.1	14.9
69	62	37	38	7	12	17	16	23.8	87.5	77.8	68.5	70.4	23.8	12.5	22.2	31.5	29.6
1,383	1,215	1,014	1,048	263	440	647	622	30.3	84.1	73.4	61.0	62.8	29.7	15.9	26.6	39.0	37.2
496	433	353	375	84	148	224	203	31.6	85.5	74.5	61.5	65.0	28.4	14.5	25.5	38.5	35.0
301	266	228	221	36	69	104	108	26.2	88.2	78.4	68.7	67.2	23.8	10.7	20.8	31.3	32.8
238	210	187	190	32	58	80	76	27.0	88.1	78.4	70.0	71.4	23.8	11.9	21.6	30.0	28.6
276	243	215	229	44	71	93	79	27.3	86.3	77.4	69.8	74.4	23.7	13.7	22.6	30.2	25.6
361	228	196	202	40	73	102	98	26.0	86.7	75.7	65.8	67.8	26.6	13.3	24.3	34.2	32.2
138	112	99	116	21	37	50	33	26.3	83.8	73.2	66.4	77.8	23.7	16.1	26.8	33.6	22.2
301	318	224	237	40	24	119	107	28.8	88.3	93.0	65.3	68.9	21.8	11.7	7.0	34.7	31.1
866	753	656	658	155	273	376	376	31.3	84.8	73.6	63.5	63.8	28.7	15.2	26.6	36.5	36.2
783	679	553	531	195	310	443	473	34.1	80.1	68.7	56.5	52.8	33.8	19.9	31.3	44.5	47.2
345	303	272	269	55	96	125	127	24.7	84.3	73.9	68.5	67.9	25.3	13.7	26.1	31.5	32.1
150	132	108	107	30	29	45	40	28.8	88.2	82.0	70.6	72.8	21.2	11.8	18.0	29.4	27.2
549	461	413	419	83	149	214	208	24.0	84.8	78.3	65.9	66.8	26.0	15.2	21.7	34.1	33.2
69	58	45	49	13	18	32	29	30.5	84.8	78.3	58.4	61.8	29.5	15.2	21.7	41.6	38.2
160	142	125	120	19	37	54	56	26.7	89.4	79.3	69.8	68.2	23.3	10.6	20.7	30.2	31.8
16	14	12	13	4	6	8	8	27.5	80.0	70.0	60.0	60.0	32.5	20.0	30.0	40.0	40.0
85	73	68	76	14	27	32	26	25.7	85.9	73.0	68.8	76.0	24.3	14.1	27.0	31.2	23.8
812	735	602	591	147	265	378	399	29.5	84.7	72.7	61.6	59.7	30.5	15.3	27.3	38.4	40.3
43	37	31	29	6	11	18	20	31.8	87.8	77.1	63.3	58.3	28.2	12.2	22.9	36.7	40.8
2,635	2,312	1,950	1,915	649	799	1,184	1,264	29.6	83.4	74.3	63.2	60.6	29.6	16.6	25.7	37.2	39.4
320	278	242	291	51	91	126	95	26.5	86.3	75.3	64.1	75.5	23.2	13.7	24.7	33.8	24.5
85	69	65	62	7	12	14	17	23.3	88.7	80.3	78.3	71.2	26.7	11.3	19.7	23.7	28.8
1,131	987	824	894	206	358	522	458	31.3	84.6	73.4	61.8	66.1	28.7	15.4	26.6	38.2	33.9
263	229	195	207	41	75	105	92	26.0	86.5	74.9	65.0	69.2	26.0	13.5	25.1	35.0	30.8
161	142	136	148	28	51	56	45	21.5	84.7	74.0	70.8	76.7	23.5	15.3	26.0	29.2	23.3
1,731	1,509	1,242	1,216	283	513	786	864	33.2	86.0	74.7	61.2	58.5	30.0	14.0	25.3	38.8	41.5
138	120	100	108	29	49	70	65	30.6	82.6	71.0	58.8	63.0	31.3	17.4	29.0	41.2	36.9
176	153	129	155	31	44	58	28	19.2	89.3	79.2	69.0	84.7	18.4	10.7	20.8	31.0	15.3
62	55	48	49	8	12	17	16	26.8	88.8	91.2	82.1	74.2	19.2	8.8	17.9	25.8	26.6
259	242	225	244	41	72	104	80	30.7	87.9	78.4	68.4	73.2	22.4	12.1	21.6	31.6	26.7
698	613	531	531	97	166	241	265	34.1	87.8	76.7	65.7	66.7	26.8	12.2	23.3	34.3	33.3
64	56	49	48	11	18	26	27	29.6	85.3	75.7	65.3	64.0	27.4	14.7	24.3	34.7	36.0
51	45	40	40	9	15	19	19	27.8	85.0	75.8	67.8	67.8	28.1	15.0	25.4	32.2	32.2
312	273	231	246	60	74	114	93	28.9	88.6	78.7	67.3	73.8	23.1	11.4	21.3	32.7	27.6
279	245	219	222	46	82	109	107	33.8	85.8	76.9	67.0	67.5	26.2	14.2	23.1	33.0	32.5
230	202	174	183	33	61	89	82	34.8	87.8	78.8	68.2	68.9	25.2	12.2	21.2	31.8	31.1
420	366	320	335	67	121	164	147	34.3	86.2	73.2	66.1	69.5	25.7	13.8	26.8	33.9	30.5
32	28	23	23	4	7	13	13	34.1	88.9	80.0	63.9	63.9	25.9	11.1	20.0	34.6	36.1

TABLE VI. STATES RANKED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE COMPENSABLE LABOR FORCE, APRIL 1930; 1933 AVERAGE; AND 1930-1933 AVERAGE 1/

State	April 1930 Percent of compensable labor force unemployed	April 1930 Ratio to average of all States (percent)	State	1933 Average Percent of compensable labor force unemployed	1933 Average Ratio to average of all States (percent)	State	19
United States - -	14.3	100.0	United States - - - - -	34.8	100.0	United States - - - -	
1. Nevada - - - - - -	20.0	139.8	1. Michigan - - - - - - -	47.2	135.6	1. Michigan - - - - - -	
2. Michigan - - - - -	19.9	139.2	2. Pennsylvania - - - - -	41.5	119.3	2. Nevada - - - - - - -	
3. Rhode Island - - -	17.4	121.7	3. New Mexico - - - - - -	40.8	117.2	3. Rhode Island - - - -	
4. Illinois - - - - -	15.9	111.2	4. New Jersey - - - - - -	40.3	115.8	4. New Jersey - - - - -	
5. Ohio - - - - - - -	15.4	107.7	5. Arkansas - - - - - - -	40.3	115.8	5. Pennsylvania - - - -	
6. Oregon - - - - - -	15.3	107.0	6. Nevada - - - - - - - -	40.0	114.9	6. Illinois - - - - - -	
7. New Jersey - - - -	15.3	107.0	7. New York - - - - - - -	39.5	113.5	7. Montana- - - - - - -	
8. Massachusetts- - -	15.2	106.2	8. Arizona- - - - - - - -	39.5	113.5	8. New York - - - - - -	
9. Montana- - - - - -	15.2	106.2	9. Florida- - - - - - - -	38.3	110.1	9. Arizona- - - - - - -	
10. Vermont- - - - - -	15.0	104.9	10. Montana- - - - - - - -	38.2	109.8	10. Florida- - - - - - -	
11. California - - - -	14.8	103.5	11. Rhode Island - - - - -	38.0	109.2	11. Ohio - - - - - - - -	
12. Utah - - - - - - -	14.7	102.8	12. Illinois - - - - - - -	37.2	106.9	12. Massachusetts- - - -	
13. New York - - - - -	14.6	102.1	13. Colorado - - - - - - -	36.8	105.2	13. Indiana- - - - - - -	
14. Indiana- - - - - -	14.5	101.4	14. Massachusetts- - - - -	36.4	104.6	14. Connecticut- - - - -	
15. Washington - - - -	14.2	99.3	15. Wyoming - - - - - - -	36.1	103.7	15. New Mexico - - - - -	
16. Connecticut- - - -	14.2	99.3	16. Utah - - - - - - - - -	36.0	103.4	16. Utah - - - - - - - -	
17. Maine- - - - - - -	14.1	98.6	17. Indiana- - - - - - - -	35.0	100.6	17. Arkansas - - - - - -	
18. New Hampshire- - -	14.1	98.6	18. Ohio - - - - - - - - -	33.9	97.4	18. Colorado - - - - - -	
19. Florida- - - - - -	14.0	97.9	19. Texas- - - - - - - - -	33.3	95.7	19. Washington - - - - -	
20. Colorado - - - - -	14.0	97.9	20. Missouri - - - - - - -	33.2	95.4	20. Vermont- - - - - - -	
21. Pennsylvania - - -	14.0	97.9	21. Connecticut- - - - - -	33.2	95.4	21. Oklahoma 0 - - - - -	
22. Wisconsin- - - - -	13.8	96.5	22. Iowa - - - - - - - - -	32.8	94.3	22. Missouri - - - - - -	
23. North Carolina - -	13.7	95.8	23. Washington - - - - - -	32.5	93.4	23. Louisiana- - - - - -	
24. Minnesota- - - - -	13.7	95.8	24. Louisiana- - - - - - -	32.2	92.5	24. Wyoming- - - - - - -	
25. Kentucky - - - - -	13.7	95.8	25. Vermont- - - - - - - -	32.2	92.5	25. California - - - - -	
26. Arizona- - - - - -	13.7	95.8	26. Minnesota- - - - - - -	32.1	92.2	26. Texas- - - - - - - -	
27. Oklahoma - - - - -	13.5	94.4	27. Nebraska - - - - - - -	31.8	91.4	27. Wisconsin- - - - - -	
28. Louisiana- - - - -	13.3	93.0	28. West Virginia- - - - -	31.1	89.4	28. Minnesota- - - - - -	
29. Missouri - - - - -	13.2	92.3	29. Maryland - - - - - - -	31.1	89.4	29. West Virginia- - - -	
30. Alabama - - - - -	12.5	87.4	30. California - - - - - -	30.9	88.8	30. Alabama- - - - - - -	
31. Idaho - - - - - -	12.5	87.4	31. Alabama - - - - - - -	30.8	88.5	31. New Hampshire - - -	
32. West Virginia - -	12.5	87.4	32. Oklahoma- - - - - - -	30.8	88.5	32. Iowa - - - - - - - -	
33. New Mexico- - - -	12.2	85.3	33. Wisconsin - - - - - -	30.5	87.6	33. Idaho- - - - - - - -	
34. Texas - - - - - -	12.2	85.3	34. Idaho - - - - - - - -	29.6	85.1	34. Maine- - - - - - - -	
35. Tennessee - - - -	12.1	84.6	35. North Dakota- - - - -	28.8	82.8	35. Oregon - - - - - - -	
36. Kansas- - - - - -	11.9	83.2	36. Kansas - - - - - - - -	28.6	82.2	36. Nebraska - - - - - -	
37. Mississippi - - -	11.8	82.5	37. Virginia- - - - - - -	27.4	78.7	37. North Carolina - - -	
38. Maryland- - - - -	11.7	81.8	38. Mississippi - - - - -	27.2	78.2	38. Virginia - - - - - -	
39. Arkansas- - - - -	11.6	81.1	39. Kentucky- - - - - - -	25.6	73.5	39. Kansas - - - - - - -	
40. Virginia- - - - -	11.4	79.7	40. Tennessee - - - - - -	24.7	71.0	40. Kentucky - - - - - -	
41. Georgia - - - - -	11.3	79.0	41. South Dakota- - - - -	24.6	70.7	41. Tennessee- - - - - -	
42. North Dakota- - -	11.3	79.0	42. Oregon- - - - - - - -	23.3	67.0	42. Mississippi- - - - -	
43. Wyoming - - - - -	11.1	77.6	43. District of Columbia-	23.1	66.4	43. Maryland - - - - - -	
44. Iowa- - - - - - -	10.7	74.8	44. New Hampshire - - - -	23.0	66.1	44. North Dakota - - - -	
45. South Carolina- -	10.7	74.8	45. Maine - - - - - - - -	22.1	63.5	45. District of Columbia	
46. Nebraska- - - - -	10.6	74.1	46. North Carolina- - - -	22.05	58.9	46. Delaware - - - - - -	
47. Delaware- - - - -	10.6	74.1	47. Delaware- - - - - - -	19.1	54.9	47. South Carolina - - -	
48. District of Columbia	10.6	74.1	48. South Carolina- - - -	15.3	44.0	48. South Dakota - - - -	
49. South Dakota- - -	8.8	61.5	49. Georgia - - - - - - -	14.9	42.8	49. Georgia- - - - - - -	

1/ Estimates derived from population and employment data reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

TABLE VI. STATES ARRANGED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE COMPENSABLE LABOR FORCE, APRIL 1930; 1933 AVERAGE; AND 1930-1933 AVERAGE

State	1933 Average: Percent of compensable labor force unemployed	1933 Average: Ratio to average of all States (percent)	State	1930-1933 average: Percent of compensable labor force unemployed	1930-1933 average: Ratio to average of all States (percent)
United States	34.8	100.0	United States	27.5	100.0
1. Michigan	47.2	135.6	1. Michigan	35.9	130.5
2. Pennsylvania	41.5	119.2	2. Nevada	32.5	118.2
3. New Mexico	40.8	117.2	3. Rhode Island	31.5	114.5
4. New Jersey	40.3	115.8	4. New Jersey	30.5	110.9
5. Arkansas	40.3	115.8	5. Pennsylvania	30.0	109.1
6. Nevada	40.0	114.9	6. Illinois	29.7	108.0
7. New York	39.5	113.5	7. Montana	29.5	107.3
8. Arizona	39.5	113.5	8. New York	29.5	107.3
9. Florida	38.3	110.1	9. Arizona	29.3	106.5
10. Montana	38.2	109.8	10. Florida	28.9	105.1
11. Rhode Island	38.0	109.2	11. Ohio	28.7	104.4
12. Illinois	37.2	106.9	12. Massachusetts	28.7	104.4
13. Colorado	36.6	105.2	13. Indiana	28.4	103.3
14. Massachusetts	36.4	104.6	14. Connecticut	28.2	102.5
15. Wyoming	36.1	103.7	15. New Mexico	28.2	102.5
16. Utah	36.0	103.4	16. Utah	27.4	99.6
17. Indiana	35.0	100.6	17. Arkansas	27.3	99.3
18. Ohio	33.8	97.4	18. Colorado	27.0	98.2
19. Texas	33.3	95.7	19. Washington	26.2	95.3
20. Missouri	33.2	95.4	20. Vermont	26.1	94.9
21. Connecticut	33.2	95.4	21. Oklahoma	26.0	94.5
22. Iowa	32.8	94.3	22. Missouri	26.0	94.5
23. Washington	32.5	93.4	23. Louisiana	26.0	94.5
24. Louisiana	32.2	92.5	24. Wyoming	25.9	94.2
25. Vermont	32.2	92.5	25. California	25.8	93.8
26. Minnesota	32.1	92.2	26. Texas	25.8	93.8
27. Nebraska	31.8	91.4	27. Wisconsin	25.7	93.5
28. West Virginia	31.1	89.4	28. Minnesota	25.3	92.0
29. Maryland	31.1	89.4	29. West Virginia	25.2	91.6
30. California	30.9	88.8	30. Alabama	25.1	91.3
31. Alabama	30.8	88.5	31. New Hampshire	24.3	88.4
32. Oklahoma	30.8	88.5	32. Iowa	23.8	86.5
33. Wisconsin	30.2	87.6	33. Idaho	23.8	86.5
34. Idaho	29.6	85.1	34. Maine	23.7	86.2
35. North Dakota	28.8	82.8	35. Oregon	23.5	85.5
36. Kansas	28.6	82.2	36. Nebraska	23.3	84.7
37. Virginia	27.4	78.7	37. North Carolina	23.2	84.4
38. Mississippi	27.3	78.2	38. Virginia	23.1	84.0
39. Kentucky	25.6	73.5	39. Kansas	22.0	83.8
40. Tennessee	24.7	71.0	40. Kentucky	22.7	82.5
41. South Dakota	24.6	70.7	41. Tennessee	22.4	81.5
42. Oregon	23.3	67.0	42. Mississippi	21.3	77.1
43. District of Columbia	23.1	66.4	43. Maryland	21.2	77.1
44. New Hampshire	23.0	66.1	44. North Dakota	20.7	75.3
45. Maine	22.1	63.5	45. District of Columbia	20.6	74.9
46. North Carolina	22.05	58.9	46. Delaware	20.3	73.8
47. Delaware	19.1	54.9	47. South Carolina	19.4	70.5
48. South Carolina	15.3	44.0	48. South Dakota	19.2	69.8
49. Georgia	14.9	42.8	49. Georgia	19.1	69.5

reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

Utilizing the Bureau of Labor Statistics indexes and the United States Censuses of Occupations and Unemployment of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the limited time available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State.

Variation in Unemployment Between States

According to Table III the degree of unemployment varies widely from State to State. Table IV in which the States are arrayed according to the estimated percentage of the [fol. 104] compensable labor force unemployed in April, 1930, shows a range from approximately 20 per cent in Nevada, to about 8.8 per cent in South Dakota; the 1933 average indicates a high in Michigan over three times as great as the low in Georgia. However, as the period of observation is lengthened the range of variations between States seems to decrease. This conclusion is supported by the 1930-1933 average in which the peak of 35.9 per cent unemployed in Michigan is less than twice as large as the low of 19.1 per cent in Georgia.

From Table IV a comparison may also be made between the percentage unemployed in each State and the percentage unemployed in the United States as a whole. When the ratio of the unemployed in a State to the average of all States is considered, the range in deviations from the National average is from 61.5 per cent to 139.9 per cent for April, 1930; from 42.8 per cent to 135.6 per cent for 1933, but only from 69.5 per cent to 130.5 per cent for the four-year period 1930-1933. It seems probable, therefore, that if the period of observation were extended to ten years or more, the sev-

ral States might show even less variations and even smaller deviations from the National average.

It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turnover of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan.

[fol. 105] Income from Contributions

The funds for State unemployment compensation systems under the suggested bill are to be raised by a 3-per cent contribution based upon the payrolls of those employed in the covered employments.

Table V shows a rough approximation of the total income that would have been collected in 1933 by such a levy within each State had a plan been in operation for some time. If business conditions continue to improve, the income by 1938, when the full 3-per cent Federal tax becomes operative, will be substantially higher.

State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have an important bearing on the total amount raised. Tracing the estimated income through the years 1922-1933 for the United States as a whole, a peak in yearly amounts collected appeared in 1929 which was about 80 percent greater than the low reached in 1933. Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies,

drastic measures will have to be taken to maintain a system on a solvent basis.

Benefits

The scarcity of data on employment and unemployment statistics by States makes it impossible to calculate accurately the amount and duration of benefits which can be allowed within each State. Estimates for the United States as a whole have been utilized and such estimates may be roughly adjusted for individual States according to the variation in their unemployment experience from the average in the United States.

[fol. 106]

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933

State	Total wages and salaries of gainful workers, 1929 (In Millions)	Wages and salaries of total compensable labor force (In millions)		Three per cent contributions for total compensable labor force,
		1929	1933	1933
United States	$59,797	$33,785	$17,602	$528,060,000
Alabama	589	333	173	5,190,000
Arizona	209	118	61	1,830,000
Arkansas	320	181	94	2,820,000
California	3,738	2,112	1,100	33,000,000
Colorado	445	251	131	3,930,000
Connecticut	995	562	293	8,790,000
Delaware	122	69	36	1,080,000
District of Columbia	400	226	118	3,540,000
Florida	528	298	155	4,650,000
Georgia	654	370	193	5,790,000
Idaho	147	83	43	1,290,000
Illinois	5,024	2,839	1,479	44,370,000
Indiana	1,512	854	445	13,350,000
Iowa	819	463	241	7,230,000
Kansas	658	372	194	5,820,000
Kentucky	689	389	203	6,090,000
Louisiana	622	351	183	5,490,000
Maine	326	184	96	2,880,000
Maryland	800	452	235	7,050,000
Massachusetts	2,709	1,531	798	23,940,000
Michigan	3,000	1,695	883	26,490,000
Minnesota	1,032	583	304	9,120,000
Mississippi	300	170	89	2,670,000
Missouri	1,614	912	475	14,250,000
Montana	237	134	70	2,100,000
Nebraska	449	254	132	3,960,000
Nevada	61	34	18	540,000
New Hampshire	217	123	64	1,920,000
New Jersey	2,752	1,555	810	24,300,000
New Mexico	120	68	35	1,050,000
New York	9,906	5,596	2,915	87,450,000
North Carolina	632	357	186	5,580,000
North Dakota	153	86	45	1,350,000

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933—Continued

State	Total wages and salaries of gainful workers, 1929 (In Millions)	Wages and salaries of total compensable labor force (In millions)		Three per cent contributions for total compensable labor force,
		1929	1933	1933
Ohio	3,855	2,178	1,135	34,050,000
Oklahoma	748	423	220	6,600,000
Oregon	492	278	145	4,350,000
Pennsylvania	5,481	3,096	1,613	48,390,000
Rhode Island	404	228	119	3,570,000
South Carolina	300	170	89	2,670,000
South Dakota	161	91	47	1,410,000
Tennessee	676	382	199	5,970,000
Texas	1,855	1,048	546	16,380,000
Utah	203	115	60	1,800,000
Vermont	145	82	43	1,290,000
Virginia	733	414	216	6,480,000
Washington	891	503	262	7,860,000
West Virginia	657	371	193	5,790,000
Wisconsin	1,309	740	386	11,580,000
Wyoming	108	61	32	960,000

[1] Leven, Moulton, and Warburton "America's Capacity to Consume"; Brookings Institution, Washington, D. C., 1934; pp. 175, table 19 (Income from Occupation).

[2] Index—0.565—$\frac{\text{Employed Compensable Labor Force for U. S.}}{\text{Total Employed Gainful Workers for U. S.}}$

[3] Index—0.521—$\frac{\text{Total Assessable Payroll, 1933}}{\text{Total Assessable Payroll, 1929}}$

[fol. 107] On the basis of the extent and duration of unemployment in the compensable labor force of the United States as a whole during 1922-1933, it has been estimated that sufficient funds would be collected from a 3 per cent tax upon payrolls to pay benefits equal to 50 per cent of wages for 11 weeks with a three-week waiting period and for 12 weeks with a four-week waiting period.

If over a period of time the rate of unemployment in an individual State tends to approximate the rate for the Nation as a whole, there is some justification for using the National figure to obtain preliminary estimates of the possible behavior of State unemployment compensation systems over a period of years. However, if the average rate of unemployment for a State during 1930-1933 is estimated as higher than that for the United States during those years, the benefit period provided by the State law should be shorter than the National estimate would permit; on the other hand, if the unemployment rate for a State is lower than for the United States, conservatism suggests that the

benefit period be kept equal to those permissable according to National statistics, rather than being increased.

The suggested bill proposes: (1) a rate of weekly benefits of 50 per cent of full-time wages, not to exceed a $15 maximum; (2) compensation of partial unemployment only to the extent that an employee's wages and benefits combined will not exceed two dollars more than the weekly benefit to which he would be entitled if totally unemployed; (3) a ratio of 1 week of benefits to every 4 weeks of employment; (4) certain disqualifications or penalties for unemployment caused by trade disputes, voluntary quitting, or discharge for misconduct; and other minor provisions all of which affect the maximum number of weekly benefits that may be paid in any year to an unemployed worker. Even if the above provisions are not changed, the maximum duration of benefits that may be provided is still contingent on what decision is reached as to (1) the contribution rate imposed, and (2) the length of the waiting period required. Since these are questions on which there may be greater differ-
[fol. 108] ences of opinion than on the other provisions of the suggested State bill, the section which follows discusses the effect that different decisions will have in terms of the maximum durations of benefits payable.

Effect of Variations in Contribution Rates on Duration of Benefits

In order to provide longer durations of benefit than those indicated as possible with a 3 per cent contribution, it may seem desirable to some State legislatures to increase the rate of contribution above the Federal excise tax (either by increasing the employer's rate, by requiring employee contributions, or by providing for a contribution by the State). With a three-week waiting period, the 3 per cent contribution would roughly have permitted the payment of 11 weeks of benefit for the United States as a whole, whereas on the same assumptions, a 4 per cent contribution rate would have increased the duration of benefits to about 17 weeks, and a 5 per cent contribution would have made possible the payment of about 24 weeks of benefits. Thus the increase in the length of benefits is greater in proportion than the increase in the contribution rate. This is explained by the distribution of the unemployed according to

the duration of their unemployment taken from surveys or censuses of unemployment, which show that a larger proportion of the idle are unemployed for short periods of time than for long periods. For example, on the basis of records of about 5,000,000 unemployed, 21 per cent were unemployed 4 weeks or less, 13 per cent were unemployed 5 to 8 weeks, while only 5 per cent were unemployed from 17 to 20 weeks. Consequently, as the duration of benefits is increased each additional week added will require a proportionately smaller addition to the rate of contributions necessary to finance the benefits.

An additional 1 or 2 per cent contribution will therefore make possible an extension of benefits to a duration that will more adequately protect the unemployed against long periods of unemployment. The estimated effect of a higher rate of contributions on the maximum duration of benefits that each State can pay (with variable waiting periods) is shown in Table VI.

[fol. 109] Effect of the Waiting Period on the Duration of Benefits

As previously stated, the cost of compensating the earlier weeks of unemployment is greater than compensating the later weeks. It follows therefore that the length of the waiting period has a considerable effect upon the duration of benefits. According to actuarial estimates for the United States as a whole, a change of one week either way from a three-week waiting period would result in a corresponding change of one to three weeks in the length of benefits permissible.

Effect of Two Solvency Bases on Duration of Benefits

An unemployment compensation system may, of course, be designed to provide benefits only during periods of normal rates of unemployment and minor depressions. The total contributions received by the unemployment fund may in this event be used to increase the duration of benefits. This will leave the relief of unemployment during major depressions to be met from other funds, or will require Government support of the unemployment compensation fund. For example, the income received by a hypothetical pooled fund for the entire United States is estimated as $6,972,000,000 from 1922 through 1930 and as $8,746,000,000

from 1922 through 1933 at the same rate of contribution, 3 per cent of payrolls. These amounts represent the estimated totals available for benefits during the years in which the funds were collected. Since unemployment was very severe during 1931, 1932, and 1933, the income of the fund would have been greatly reduced at the same time that expenditures for benefits would have been increased. Obviously the fund would not remain solvent unless the duration or amounts of benefits were reduced. The tabulation below shows the maximum possible duration of benefits with identical waiting periods, on two bases of solvency, paying out the entire income of the fund as benefits: A from 1922 through 1930 and B from 1922 through 1933.

[fol. 110]

Waiting period	Maximum possible duration of benefits from 3-per cent contributions	
	A[1] (1922-1930)	B[2] (1922-1933)
2 weeks	17	10
3 weeks	19	11
4 weeks	22	12

[1] A assumes that the entire income received from contributions within the period 1922-1930, inclusive, is expended for benefits within the period.

[2] B assumes that the expenditures for benefits during 1922-1930, inclusive, are kept conservative in order to meet the emergency of the depression years 1931-1933, when income falls and expenditures increase.

[fol. 111]

Summary

After a decision has been reached as to the contribution rate to be imposed and the length of the waiting period to be required, the maximum duration of benefits that can be provided may be determined. (Of course, decision as to these other factors will also be influenced by the effect each of them has on the duration of benefits.)

Table VI has been prepared to indicate the maximum duration of benefits which might be provided on the basis of unemployment experience from 1922-1933 in the United States as a whole, with contribution rates of 3, 4, or 5 per cent, and with waiting periods of 2, 3, or 4 weeks in 52 weeks.

TABLE VI.—Estimated Maximum Number of Weeks of Benefits Payable by States

(Based on Standards of Draft Bill)

Waiting period	Rate of Contribution		
	3 per cent	4 per cent	5 per cent
2 weeks	10	15	21
3 weeks	11	17	24
4 weeks [1]	12	18	26

[1] On a cost basis a 2-week waiting period in 13 weeks is approximately equal to a 4-week period in 52.

It must be emphasized that these estimates should not be considered as guaranteeing that the durations of benefits indicated in Table VI can be paid in the actual experience of any one State. They are based on available statistics for the United States, but there is no certainty either that the estimates are entirely reliable, or that the employment and unemployment experience of the past will be repeated in the future. It is urged that those States that have more adequate statistics of their own rates of unemployment should make independent estimates in order to ascertain the duration of benefits possible under their own assumed unemployment compensation plans.

[fol. 112]

EXHIBIT "F" TO AFFIDAVIT

Statistical Summary of Business Conditions in Alabama
1929–1935

Indices Corrected for Trend and Seasonal Normal Equals 100

Year	Coal Production 1,000 net tons	Coke Production 1,000 net tons	Cotton Consumption 100 running bales	Electric Energy Consumed 100,000 kwh	Pig Iron Production 100 gross tons	Coal	Coke	Cotton	Electric Energy	Pig Iron	Steel	Composite
1929	1,495	396	529	916	2,244	102.8	111.7	117.0	108.7	107.5	114.3	111.9
1930	1,298	332	439	889	1,953	89.2	92.8	94.2	100.0	92.9	83.5	90.5
1931	1,000	245	455	894	1,394	68.7	67.9	94.7	96.3	65.8	64.8	77.0
1932	655	117	470	825	550	45.0	32.0	95.1	85.6	25.8	30.3	55.5
1933	731	139	537	869	742	50.3	37.8	105.5	87.4	34.5	48.4	66.1
1934	800	176	459	875	951	55.0	47.4	87.8	85.9	43.9	54.3	64.1
1935	712	167	508	977	1,057	48.9	44.6	94.7	94.3	48.5	58.1	67.6
1936 Aug.	888	255	620	1,206	1,481	61.4	68.7	116.7	115.8	70.3	90.8	91.3

Extract from University of Alabama Business News, February 1st, 1936 and October 1st, 1936.

[fol. 113] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ALLAN LITTLE—Filed November 17, 1936

STATE OF ALABAMA,
County of Etowah:

Before the undersigned authority in and for the County and State aforesaid, personally appeared Allan Little, who being first duly sworn deposes and says that he is Agent and a Director of the Dwight Manufacturing Company, a corporation, hereinafter referred to as the "Company", and as such agent and director has knowledge of the facts herein deposed to and has the authority of the Company to make this affidavit.

I

The Company is a Massachusetts Corporation and has operated a cotton textile manufacturing mill in the State of Alabama for approximately forty years; that during this period there has been no cessation of operation at this mill of the Company due to conditions of unemployment and the employment at this mill has been practically continuous and in all substantial respects normal; that since the Company began to operate this mill none of the employees [fol. 114] thereof, except for a brief period while some of such employees were on a strike, have received any aid, charitable or otherwise, from Federal, State County or Municipal agencies, that deponent is advised of or has been able to learn of; that on the contrary such employees have at all times, except in the case of a few of such employees who were on a strike for a brief period, as hereinabove referred to, been self supporting and able to take care of themselves and their families.

II

The present operations of the Company are located in Etowah County, Alabama, and are known as the Alabama City Mill of the Dwight Manufacturing Company, the same being the only mill the Company has ever operated in the State of Alabama.

The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the Company for lengths of time in accordance with the following table:

	1930	1931	1932	1933	1934	1935	1936
1 to 5 years	62.8%	58%	56%	58.6%	48.4%	53.5%	60%
5 to 10 years	18.7	20.6	21.5	19.8	24.8	22.9	20.5
10 to 15 years	9.8	11.5	11.9	11.3	13.8	11.8	9.4
15 to 20 years	5.3	5.9	6.3	6.2	8	7.3	6.4
20 to 25 years	3.4	4	4.3	4.1	5	4.5	3.7

That during the following years the average number of employees employed by the Company in its operation of this mill has been in accordance with the following table:

[fol. 115] Average Number of Employees

Year	Men	Women
1930	973	575
1931	938	578
1932	1118	428
1933	1260	496
1934	1020	472
1935	1165	647

The amounts of the Company's payrolls for this mill during the years indicated is in accordance with the following table:

Pay Rolls

Year	Amount
1930	$1,050,784.75
1931	1,028,809.50
1932	883,004.86
1933	1,003,085.12
1934	852,371.15
1935	1,246,521.49

That during the following years the yardage of cloth produced by this mill has been in accordance with the following table:

Yardage

Year	Yards
1930	37,605,327
1931	54,263,376
1932	62,557,710
1933	56,447,525
1934	34,853,835
1935	54,863,574

The decrease in the above tables for the year 1934 in the amount of payrolls and the total yardage are due to the fact that for a short period of time during the year 1934 there was a general strike of textile workers in the Southern [fol. 116] Textile Mills, including this mill of this Company.

III

The Company during such time has sold and is now selling its products in the State of Alabama and also in various other portions of the United States. All of such sales and shipments to customers are f. o. b. cars to the order of the buyer at Gadsden, Alabama. The Company, in the conduct of its business over the period of its existence, has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its cloth to some of the same customers.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama, annually, amounting to the approximate sum of $32,957.21; and also pays to the State of Alabama annually substantial amounts of taxes amounting to substantially the sum of $23,000.00.

The Company has in its employ in its operations in the State of Alabama 2,408 employees and has had in its employment during the times herein referred to approximately 1431 to 2453 employees.

The Company prior to and at the time of going into effect of the Federal Social Security Act and of the Alabama Unemployment Compensation Act, had in existence contracts for the sale and future delivery from time to time of cloth manufactured by the Company at this mill with persons, firms or corporations in the State of Alabama and with persons, firms or corporations in other states, many of which [fol. 117] contracts have not yet expired or been completely performed, and for the performance of which the Company is bound and obligated. The prices stipulated in such contracts for the delivery of cloth were based upon the price which the Company was obligated under its contract with its employees to pay to employees for their services.

There has been no cessation of operations in the business of the Company, nor has there been any interruption or cessation of operation in its business or in the actual em-

ployment of its employees at this mill during the past fifteen years, except that during the year 1934 when said strike of textile workers was in effect for a period of about 12 weeks. Nor has there been during such time any substantial curtailment in the total employee personnel regularly employed and reporting for work, except during the period of time when under the NRA Code promulgated by the Federal Government the Company was required to limit its operations to two shifts a day instead of three shifts a day. This mill of the Company is working now, and since such textile strike over two years ago has been working continuously and the Company has now employed and at work in this mill a personnel of 2,408 men and women.

That the operation of the Company and the employment of its employees has been such for the past eleven years down to and including the present time, that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect no employee of the Company would have been eligible under the terms [fol. 118] of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than the occasional benefits which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the Company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes or from minor accidents in the mill or from machinery, nor is there any likelihood of a lack of raw material or lack of market outlet or any other reason which will subject the mill to shutdown. That the business of the Company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the Company has no connection or any kind with the employees of any other employers in the State of Alabama; and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation

of the Company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the Company's continued operation of its business or as a result of competition from the Company. On the contrary, the Company's continued operation of this mill has continuously [fol. 119] and directly contributed to employment in other business in Alabama and in other States.

IV

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies, contributions, taxes or pay roll deductions", imposed by said Act. The Company is by the terms of the Act liable for the payment of $9,854.26 for account of the exactions imposed against it directly with respect to employment from Jan. 1, 1926, through August 31, 1936, and for the period of time from May 1, 1936, through Aug. 31, 1936, is liable for the payment of $5,537.82 with respect to the statutory percentage of wages of its employees exacted from its employees, but for the collection and payment of which the Company is made liable, or a total of $15,392.08, the payment of which is sought to be collected by the Respondents in the above styled case. That the Company will be required to pay an estimated amount of $2744.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $26,368.08. The amount of tax which the Company will be liable for calculated at the percentages prescribed by the Act for 1937 and 1938 will be approximately $48,706.00 and $64,362.00, respectively, or a total of $139,436.08 for the three year period.

[fol. 120]

V

That substantially all of the employees of the Company, or more than eighty per cent, have notified the management that they object to and protest against any deduction being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation

Act and that they have voluntarily contributed out of their wages to a fund made up by the employees of this Company and the Gulf States Steel Company and other Companies in the Birmingham District for the purpose of contesting in the Courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Mfg. Co., and Hubert Killian vs. Gulf States Steel Company; that affiant has been informed and believes such information and on such information and belief deposes that in addition to over eighty per cent of the employees of this Company approximately 5,000 employees of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that therefore the Company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its em-[fol. 121] ployees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

That approximately eighty per cent of the employees of this company belong to an employees association which is now, and has for several years been, operating an insurance benefit fund which will probably be interfered with or displaced by the operation of the Alabama Unemployment Compensation Act and that for this and other reasons stated in this affidavit the employees of this Company almost as a unit object to the Act and protest against its enforcement.

Allan Little.

Sworn to and subscribed before me this the 29th day of Oct., 1936. Lillian Mann, Notary Public.

[fol. 122] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. W. FULGHUM—Filed November 17, 1936

STATE OF ALABAMA,
Jefferson County:

Before the undersigned authority in and for the county and state aforesaid personally appeared W. W. Fulghum who, being first duly sworn, deposes and says that he is Secretary and Treasurer of the Alabama Fuel & Iron Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is an Alabama Corporation and has operated coal mines in the State of Alabama for approximately twenty-five (25) years; that during this period of time there has been no cessation of operation at any of the mines of the company due to conditions of unemployment, but, on the contrary, employment at the mines of the company has been continuous and in all substantial respects normal; that since the operation of the Company began [fol. 123] none of its employees have received any aid, charitable or otherwise, from federal, state, county or municipal agencies; that, on the contrary, they have at all times been self-supporting and able to take care of themselves and their families.

II

The present operations of the Company are located in St. Clair County, Alabama, and are known as its Margaret and Acmar Divisions.

The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the company for lengths of time in accordance with the following table:

	1930	1931	1932	1933	1934	1935
1 to 5 years	52%	50%	50%	51%	52%	60%
5 " 10 "	23	22	22	19	18	14
10 to 15 years	15	16	16	16	15	13
15 " 20 "	6	6	6	7	8	7
20 " 25 "	4	5	5	7	7	6

That during the following years the average number of employees employed by the company in its operations has been in accordance with the following table:

	Year	Men
Average Number of Employees:	1930	1,143
	1931	1,166
	1932	1,106
	1933	1,027
	1934	1,187
	1935	1,516

The amounts of the Company's pay rolls during the years indicated is in accordance with the following table:

[fol. 124]

Pay Rolls

Year	Amount
1930	$978,350.00
1931	911,796.00
1932	578,012.00
1933	486,534.00
1934	592,963.00
1935	1,307,898.00

That during the following years the tonnage of coal produced by the company has been in accordance with the following table.

Tonnage

Year	Tons
1930	731,162
1931	702,774
1932	516,277
1933	486,534
1934	592,963
1935	840,909

The increases in the above tables for the year 1935 in average number of employees, in the amount of pay rolls, and

the amount of tonnage are due to the fact that at this time there was a general strike of coal miners in the Alabama District, and extra shifts were put at work by this Company for the purpose of taking care of an abnormal increase in business due to the shut down on account of the strike of substantially all of the other coal mines in the district.

III

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales [fol. 125] and shipments to customers outside the State of Alabama are f. o. b. cars to the order of buyer, Margaret and Acmar, Alabama. The Company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers. For instance, it has continuously sold coal to the Central of Georgia Railway Company for about 25 years, to the Ocean Steamship Company at Savannah, Georgia, for about 25 years, to Jno. A. Walker & Company, at Columbia, Tenn., for about 20 years, and to D. M. White & Son, at Goodwater, Ala., for about 18 years.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting to the approximate sum of $17,200.00; and also pays to the State of Alabama annually substantial amounts of taxes, amounting to substantially the sum of $27,365.00.

The Company has in its employ in its operation in the State of Alabama fifteen hundred employees, and has had in its employment during the times herein referred to approximately one thousand to fifteen hundred employees.

The company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of coal mined by plaintiff for delivery with persons in the State of Alabama, and in other States, many of which contracts have not yet expired or been completely performed, and for the perform- [fol. 126] ance of which the company is bound and obligated. The prices stipulated in such contract for delivery of coal were based upon the price which the company was

obligated under its contract with its employees to pay its employees for their services.

There has been no cessation of operations in the business of the company; now had there been any interruption or cessation of operation in its business or in the active employment of its employees for a longer period than a few days at a time, and never for a period as long as a single week during said entire time. Nor has there been during such time any curtailment in the total employee personnel regularly employed and reporting for work. The mains of the company are working now and during the times herein above referred to have been working continuously. The company has now employed and at work in its operations a personnel of fifteen hundred men.

That the operation of the company and the employment of its employees has been such from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible under the terms of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than an occasional benefit which might be [fol. 127] claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the Company has no connection of any kind with the employees of any other employers in the State of Alabama, and that an unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose opera-

tions have been slowed down or employment curtailed as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other business in Alabama, and in other states.

In deposing that the business of the company is not seasonal and that its employment has been uninterrupted, affiant does not intend to testify that it has operated its mines each and every working day. There have been work days during the slack season when the mines have not been in operation. However, such idle work days have not in any [fol. 128] way produced any unemployment among its employees because of a system which has been in operation by the company for a good many years which provides for each employees farming a certain required amount of acreage, raising a certain required number of hogs, and producing a certain required amount of garden food and canning a certain required amount of fruits and vegetables. In charge of this work the company has an agricultural expert who supervises it. The company furnishes to each employee acreage, mules, seed and other necessary equipment. As a result of this method of business not only have the employees of the company lived in comfort, but they have had many luxuries. They have not only never received a cent of assistance or relief, but have been able, out of their earnings, to furnish assistance and relief to others less fortunate.

Actual figures taken from our records, which are correctly kept, show that our employees produced the following products for the years 1932, 1933 and 1934:

	1932	1933	1934
Corn	16,361 bu.	34,990 bu.	28,148 bu.
Potatoes	18,435	18,995	18,539
Peas	2,216	2,252	1,870
Canning	100,218 qt.	119,890 qt.	100,590 qt.
Hogs	894	1,765	1,422
Weight (dressed)	165,032 lbs.	355,110 lbs.	302,278 lbs.
Sorghum	None	2,583 gal.	496 gal.

IV.

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll deductions" imposed by said Act. [fol. 129] The Company is by the terms of the Act liable

for the payment of $8,406.67 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $4,230.62 with respect to the statutory percentage of wages of its employees exacted from its employees but for the collection and payment of which the company is made liable, or a total of $12,637.29, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $2,500.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936, of $22,637.29. The amount of the tax which the company is liable for at the percentages prescribed by the Act for 1937 and 1938 will be approximately $42,000.00 and $56,000.00, respectively, or a total of $120,637.29 for the three year period.

V

That substantially all of the employees of the company, or more than ninety per cent, have notified the management that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund made up by employees of the Gulf States Steel Company, of the Dwight Manufacturing Company and of other [fol. 130] companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Manufacturing Company and Hubert Killian v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent. of the employees of this company, approximately five thousand employees of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the

test suits above referred to; that, therefore, the company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 28th day of October, 1936

W. W. Fulghum.

Subscribed and sworn to before me, this 28th day of October, 1936.

Eddie J. Sandlin, Notary Public.

[fol. 131] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE F. PETER—Filed November 17, 1936

STATE OF ALABAMA,
Shelby County:

Before the undersigned authority in and for said State in said County, personally appeared George F. Peter who, being first duly sworn, deposes and says that he is the President of Southern Coal & Coke Company, plaintiff in the above styled cause, and hereinafter referred to as the company, and as such officer has knowledge of the facts hereinafter deposed to, and is authorized by said company to make this affidavit; that affiant deposes and says as follows:

I

The plaintiff, Southern Coal & Coke Company, hereinafter called the company, is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified, in accordance with the laws of the State of Alabama, to do business in Alabama, and has been qualified

so to do and has continuously transacted business in said [fol. 132] State since the year 1918. The company's immediate predecessor in title was engaged in said business in the State of Alabama for more than nineteen years immediately preceding the company and operated under the corporate name of Southern Coal & Coke Company, and was an Alabama corporation.

That company now has and has had continuously since the year 1925 investment in the State of Alabama in excess of one hundred thousand dollars in lands, leases and plant property and equipment at its place of business at or near Boothton, Shelby County, State of Alabama, for the conduct of its business.

The business carried on and conducted by the company in said State is the mining, sale and distribution of coal, the ownership of coal lands either by direct title or under leases, the sale and disposition of property, the operation of a commissary, the renting and leasing of houses, and other business incidental to the mining and sale of coal; all of its employees live and perform their duties in the State of Alabama.

The company's principal office and place of business in the State of Alabama is and has been, during all the time hereinabove referred to, in Shelby County, Alabama, and the company, since 1918, has been and is a citizen of and having its legal residence and domicile in the State of Delaware.

The Company, during such time, has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales and shipments to customers outside of the State of Alabama [fol. 133] are f. o. b. cars to the order of buyer, Boothton, Alabama. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers.

The company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, and also pays to the State of Alabama annually substantial amounts of other taxes, the total so paid amounting to substantially the sum of $7,300.00.

The company has in its employ in its operations in the

State of Alabama three hundred employees, and has had in its employ, during the time herein referred to, approximately three hundred employees.

Plaintiff has operated its mines and business during the entire period of its existence. Coal production in Alabama is of a seasonal nature. As an illustration of this, the average days of plaintiff's operations (which is fairly consistent with the operations of other companies in Alabama engaged as is plaintiff in the mining and sale of domestic and steam coal) for the past six years has been 193 days worked in 1930, 206 in 1931, 116 in 1932, 186 in 1933, 214 in 1934 and 159 in 1935; and that the average days that the operations have been idle have been 83 work days in 1930; 70 in 1931; 160 in 1932; 90 in 1933; 50 in 1934; and 105 in 1935. The fewer days of operation and the larger number of idle days in 1932 and the first part of 1933 were due to the fact [fol. 134] that at this time plaintiff reduced its employment personnel by approximately forty men (this reduction being the direct result of the loss by the company of one of its valuable accounts on account of the fact that this customer changed its fuel requirements from coal to oil) and the decrease of average days operated and increase of average days idle for the year 1935 were due to the fact that a general strike existed in the coal fields of Alabama, including the employees of the plaintiff, for fifty days during this year. Plaintiff avers that notwithstanding the seasonal nature of its business, the average labor turnover of the plaintiff during the same years (with the exception of an increase in 1932 and 1935 due to the loss of the account and the strike above referred to) has been approximately 5 per cent. Plaintiff avers that the small per cent of labor turnover in its business is due to two causes, (a) the fact that a large percentage of plaintiff's employees have been continuously in its employ for a year many years and when there has occurred a cessation of work due to the seasonal nature of the business, or for other causes, instead of discharging such employees, it has been and will continue to be the policy of the plaintiff to divide the work that is available among all employees; (b) because of the fact that some of plaintiff's employees have been recruited from the farm population and during times of inability to work in the mines, secured the additional needed support to prevent them from becoming public charges or supported by relief or

other funds due to unemployment, by farming and gardening as an additional means of support for themselves and [fol. 135] their families during times of unemployment. Plaintiff further avers on information which he has received and believes that the same situation exists in the coal industry in the State of Alabama as a whole; that a large number of miners of Alabama have been recruited from the farm population in the general vicinity of the mines, and make use of these farms as bases during the time of unemployment.

The company, during all of such times and during the present time, has been and is in competition in the sale of its coal not only with coal operators mining coal in the State of Alabama, but with those mining coal in other States, particularly the States of Tennessee and Kentucky; that such competition has been and is so close and keen with its competitors in the other States that a very small differential in the sale price per ton of coal is sufficient to cause the company to lose a large portion of its business to its out of State competitors; that it has suffered, and will continue to suffer, its keenest competition with hydro-electricity, oil and natural gas distributors who are engaged in business in the State of Alabama, and who on account of the fact that in the manufacture and distribution of their products require a much smaller employment personnel, are, by reason of being required under the Alabama Unemployment Compensation Act to pay a substantially less amount of taxes or contributions, enabled to furnish even more and keener competition.

[fol. 136] II

That the operation of the company and the employment of its employees has been from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible, under the terms of said laws, to receive any benefits except probably some portion of the forty by which its employment personnel was reduced as aforesaid; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probably, that any of its employees will in the future become eligible

for benefits under the provisions of the Acts other than an occasional benefit which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal in the sense such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shut-down from weather or other natural causes, or from accidents in the plant or from machinery, or lack of raw material, or other reasons. That the business of the company is entirely separate, both in ownership and operation, from the business of any other person or corporation in the State of Alabama, or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any [fol. 137] unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of plaintiff's continued operation of its business or as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other businesses in Alabama, and in other States.

III

Plaintiff avers that under the terms of the Alabama Act, from January 1, 1936, through August 31, 1936, plaintiff became liable to the Commission in the sum of $3,519.70, which amount, in accordance with the contribution instructions of the Commission, and in accordance with the order of the Commission, became due and payable to the Commission on or before the 5th day of October, 1936.

Plaintiff further avers that the Commission demanded of the plaintiff prior to the filing of the bill of complaint herein the payment of said amount, and declined to make any further extensions in reference to said payments. That the company has been required and has been ordered by the Commission to pay an estimated amount of $800.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th of each succeeding month for the preceding month, or an estimated total for the year 1936 of $5,900.00.

The amount of the tax which the company will become [fol. 138] liable for at the percentage prescribed by the Act for 1937 and 1938 will be approximately $11,000.00 and $15,000.00 respectively, or a total of $32,000.00 for the three-year period.

IV

That in addition to the payment of state and county taxes referred to in Paragraph I hereof, the company has paid to the Federal Government taxes annually in substantial amounts.

That no disagreements or disputes are pending between plaintiff and its employees and that plaintiff has in existence contracts of employment with all its employees, and which provide for the rate of pay to be paid plaintiff's employees so long as they remain in its employ (the term of employment, however, being subject to the will of either party), said contracts as to rates of pay not expiring until ——, 1937.

That so far as affiant knows or has been informed no agency existed in Alabama prior to the adoption of the Alabama Unemployment Compensation Act for the compilation or analysis of unemployment statistics or data other than the State and Federal Relief Agencies which dealt with the matter solely from the standpoint of relief; that no bureau or administrative agency of the State had any staff equipped for study of the data necessary to estimate the requirements of a compulsory unemployment compensation law or plan; no such studies as to Alabama were or are in existence prior to or since the adoption of the Act; the Legislature had undertaken none either before or during the passage of the Act. That plaintiff, and as far [fol. 139] as affiant knows or has been informed no other employer of labor in the State of Alabama, was called upon, before the adoption of the Act, for its records necessary to the constructive application of the schedules or to determine the rate or levy or probably benefits for any test period, and no information of any kind was sought by any one from the plaintiff as to its prior record of unemployment among its employees or as to the need of plaintiff's employees on account of unemployment in the past, or as to any estimate which might be made as to the need in the future.

That plaintiff is subject to and obeys all laws of Alabama regulating or touching the relation of employer and em-

ployee, such as the Workmen's Compensation Act, the laws relating to the employment of minors, the laws relating to the operation of coal mines, and that it has not, in any public investigation, been found or reported to be likely to contribute to unemployment in Alabama.

That if plaintiff is required to keep its books, to make and file reports with the Commission, to collect contributions from its employees and remit these contributions to the Commission, and to do the other things pursuant to the terms of the Act and the orders of the Commission, the performance of such acts will not only be extremely inconvenient to the plaintiff but the cost of doing the same will be a very substantial sum. It is impossible to estimate the amount of such additional cost because of the fact that it is impossible to tell with any degree of certainty as to what [fol. 140] will be required of the plaintiff under the terms of the Act. Affiant deposes, however, that the cost, as aforesaid, will be substantial, requiring the employment of additional clerical help and the expenditure of other sums necessary in carrying out the orders of the Commission.

George F. Peter.

Subscribed and sworn to before me this 7th day of November, 1936. W. H. Lyman, Notary Public. (Seal.)

[fol. 141] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. R. FORSYTH—Filed November 17, 1936

STATE OF ALABAMA,
Jefferson County:

Before the undersigned authority in and for the County and State aforesaid personally appeared A. R. Forsyth, who being first duly sworn, deposes and says that he is Vice President and Treasurer of the Gulf States Steel Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is a Delaware Corporation and has been engaged in the manufacture of steel products in the State of Alabama for approximately twenty-three (23) years; that during this period of time there has been no cessation of operation of the manufacturing plants of the company due to conditions of unemployment with the exception of one brief period about the *the* year 1921, but, on the con- [fol. 142] trary, employment at the manufacturing plants of the company has been continuous and in all substantial respects normal.

II

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its products to some of the same customers.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting on the average to the approximate sum of $115,000.00, and also pays to the State of Alabama annually substantial amounts of other taxes, amounting to substantially the sum of $35,000.00.

The Company has in its employ in its operations in the State of Alabama, 3,019 employees.

The Company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of products manufactured by the company for delivery with persons in the State of Alabama, and in other States, many of which contracts had not expired or been completely performed, and for the performance of which the company was bound and obligated. Some of these contracts are even yet unexpired and to the performance of which the company is bound and obligated. The prices stipulated in such contracts for delivery of its products were based upon the price which the company was obligated under its contract with its employees to pay its [fol. 143] employees for their services.

That the business of the company is not such as is likely to result in frequent or customary unemployment of all or

any part of its personnel; nor is it subject to shutdown for weather, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the company's continued operation of its business or as a result of competition from the company. On the contrary, the company's continued operation of its business has continuously and directly contributed to employment in other business in Alabama, and in other States.

III

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll "deductions" imposed by said Act. The company is by the terms of the Act liable for the payment of $17,991.36 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $10,344.33 with respect to the statutory [fol. 144] percentage of wages of its employees exacted from its employees but for the collection and payment of which the company is made liable, or a total of $28,335.69, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $5,024.45 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $48,533.49. The amount of the tax which the company will be liable for at the percentages prescribed by the Act for 1937 and 1938

will be approximately $76,043.29 and $124,576.78, respectively, or a total of $249,153.56 for the three year period.

IV

That substantially all of the employees of the company, or more than ninety per cent., have notified the management that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund made up by the employees of this company, of the Dwight Manufacturing Company and of other companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams v. Dwight Manufacturing Company and Hubert Killiam v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent. of the employees of this company, a large number of other Alabama employers have [fols. 145-146] contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that, therefore, the company is fac*t*e with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 30th day of October, 1936.

A. R. Forsyth.

Subscribed and sworn to before me, this the 30 day of October, 1936.

E. S. Armistead, Notary Public. (Seal.)

[fol. 147] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. D. WARNER

Gulf States Paper Corporation

My name is H. D. Warner. I am Secretary and Treasurer of Gulf States Paper Corporation. The principal place of business of the corporation is in Tuscaloosa County, Alabama. This plant began the work of construction or operation in 1928, and since the completion of the plant has operated continuously, with the exception of a shut-down of several months in the latter part of 1935 due to a strike, and with temporary shut-downs of less than two weeks duration necessitated by repairs, high water, etc., in 1934 (June 17th to July 1st, and September 1st to September 20th). At other intervals operations have ceased for as much as a week, but not as long as two weeks.

As of August 31, 1929, we had 493 employees on plant roll, 28 employees on plant salary roll, and an estimated 20 on central office roll, or a total of 541 employees.

As of October 15, 1936, we had 744 employees on plant roll, 54 employees on plant salary roll, and 18 employees on central office roll, or a total of 816 employees, an increase of 275 employees over August 31, 1929.

This progressive increase in employment throughout the period of the depression and embracing the entire period of [fol. 148] the depression, is set out on the Exhibits hereto attached marked Exhibits A and B respectively.

Exhibit A is a table showing the number of salaried employees by months beginning January, 1930, and ending with September, 1936. This may be subject to correction to the extent of one or two employees, through the determination of averages for the month. This includes plant employees only.

From this table (Exhibit A) it will be seen that the salaried employees have increased steadily and progressively without a set-back of more than one or two from the previous high; from 50 during January, 1930, to 73 during September, 1936. The exits from this group for any and all causes have not been checked in detail, but the number is so small that they may be properly said to be negligible. The amounts paid employees on a salary basis are also set forth on Exhibit A.

A large majority of the employees of Gulf States Paper Corporation during 1936 were in the employment of the Company before September 14, 1935, in the regular employ of the company, under a continuing relationship and were not re-hired after that date. I do not mean that there were fixed contracts for definite terms but th... the relationship of employer and employee had become established prior to the date stated.

Had the Alabama Unemployment Compensation Law been in effect beginning January 1, 1930, the amount of levies under the Law against the Company and its salaried employees would have been as follows:

[fol. 149] Levy on Company at Progressive Rate Increase Fixed by Act, Assuming a Beginning in 1930, Plus (a) 1% on Salaried Employees and (b) 1% on All Employees

Year	Rate	(a) Company and Salaried Employees	(b) Company and All Employees*
1930	1.90%	$2,179.76	$11,388.60
1931	2.80%	3,641.03	17,696.17
1932	3.70%	4,481.04	20,607.74
1933	3.70%	4,152.33	20,982.63
1934	3.70%	4,988.81	24,650.53
1935	4.00%	5,826.51	25,585.46
1936	4.00%	4,758.94	26,668.11

* Except central office: approximately $90,000 in 1935.

Based on the stabilized operations resulting from improvement in general conditions and absorption of the turnover resulting from the sudden increase in personnel resulting from NRA, in my opinion the amount of the levy upon plaintiff and its employees will continue indefinitely on a base pay roll of approximately $800,000 per annum, or, when the assumed average of 4% (3% plus 1% against employees) is reached, an annual levy of more than $30,000. [fol. 150] Exhibit B sets out a graph showing the average number of employees by months from January 1, 1931, through September, 1936. This includes only workers employed on an hourly wage basis, and excludes the salaried employees. The principal recession in the number of hourly workers from any previous high is the period following the extraordinary increase in the number of workers resulting from the adoption of the National Industrial Re-

covery Act in 1933. An increase of several hundred employees in July and August, 1933, resulted in a turnover beyond the Company's ordinary experience in the adaptation of the new personnel to the work.

There was also an observable reduction in the number of workers for a few months in the middle of 1935. As will be noted from the graph (with the exception of the decline from the peak following the extraordinary enlargement of personnel under NRA), the increase in personnel has been steady from the beginning of operation of the plant to a satisfactory normal line shown by the graph.

This graph shows the net average for the respective months, and does not show the total number of exits, voluntary withdrawals for personal reasons, and hires of new workers to take their places. It has not been found practicable by the Company within the time available and without material expense to trace all exits in order to ascertain [fol. 151] which would have been eligible for benefits under the Alabama Unemployment Compensation Law had it been effective during the period shown by the graph. Based upon a rough approximation, I am of the opinion that the distribution of benefits under the conditions of eligibility determined by the Act would have been a small fraction of the total levies against the Company and its employees as to the workers employed on an hourly basis, and would, as above stated, have been nominal and negligible as applied to plant workers employed on a salary basis, and would have amounted to nothing for salaried officers in the central office.

The sales of the product of Gulf States Paper Corporation are principally to purchasers in interstate commerce, not more than five (5%) per cent of its sales being to purchasers in Alabama.

There is no present prospect in the operation of the business of Gulf States Paper Corporation of stoppages of operations or of any substantial curtailment of employee personnel.

I have been requested to compile certain data from official reports and other sources indicated below:

(1) I have been requested to obtain affidavits from representstive industries or employers showing as accurate as possible cross-sections of the constructive application of the Act to their respective industries or businesses. I have ac-

cordingly obtained showings from those which were ob-
[fol. 152] tainable in time for use at the first setting of the cause in which this statement is submitted, and submit them herewith:

Bituminous Coal Industry: all mines, consolidated.

Waterworks and electric utility: Alabama Water Service Co.

Wholesale merchants (hardware): Moore-Handley Hdwe. Co.

Life Insurance Companies: Protective Life Insurance Co.

Rubber Tire Industry: Goodyear Tire & Rubber Co. (Ala.).

They constitute, in my opinion, representative cross-sections of employers in Alabama included within the Act.

(2) I have been requested to compare this Company's experience of full time operations since its beginning with known examples of other plants or businesses.

(a) Highway Contractors.—The field workers in these organizations are employed generally from the floating labor pool in the vicinity of the job. During the past few years, when most highway construction has been with Federal aid, Federal relief agencies have required contractors to take workers assigned from the relief rolls in the several communities where the work is done. After the job is over the common labor is dropped permanently unless by chance another job is obtained. Contractors in this group are essentially nomadic and produce a high percentage of discharges.

(b) Building and Railway Contractors.—A somewhat similar condition obtains on all construction work. According to the affidavit of Mr. Joseph Halfpenny (Table A), approximately 10% of the labor in industries not exempt under the Alabama Act is employed in building and construction, compared with 39% in all manufacturing and not more than 2% or 3% in the manufacture of paper.

[fol. 153] (c) Manufacturing.—A wide variation in stoppages or exits prevails within the manufacturing group, from a plant of continuous operation, such as Gulf States Paper Corporation, to machines and foundry shops, furnaces, and like establishments in which there exists a heavy

excess of competitive plant capacity over market and where labor is a large factor in the manufacturing process, employment varying almost directly with orders gained in a competitive market and wholly seasonal operations such as canneries, cotton seed oil mills and like operations which can obtain their raw material only seasonally and must work it up immediately and are closed down for the remainder of the year.

(d) Professional.—At the extreme end is the professional group, as to which quits or stoppages resulting in eligible unemployment are rare. Thus in the office of counsel for plaintiff in this proceeding we are authorized to state that there have been only two exits within the last six years, both being discharges for cause, to which eligible unemployment might (if the statutory conditions were fulfilled) have attached, all other exits having been under clearly non-eligible conditions.

(3) I have been requested to state briefly facts within my knowledge or available from specialists in the matter of the existence of actuarial data sufficient to determine the amount of tax or levy necessary to provide unemployment insurance on the basis predicated by the Alabama Act.

From a monograph upon the "Actuarial Factors in State Unemployment Compensation Plans" issued by the Federal Social Security Board, January, 1936, accompanying a suggested form for State Acts, the following excerpts are quoted. The portions not indented are statements of affiant. The portions quoted and indented are from the monograph where not otherwise indicated.

[fol. 154] Based on my study of the matter I am able to state that no adequate actuarial or experience data is available; that one of the essential purposes of a two year waiting period is to require reports and study those reports, with a view to possible exclusions, inclusions or statutory changes in the levies or in the conditions to or amounts of benefits, before the benefits become distributable under the Act.

"With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to *estimate* the

benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State statistics on the unemployment problem makes such calculations for individual states very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

"The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for administration purposes when the plan goes into effect and these records will furnish some data which should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein."

(Federal Social Security Board, p. 1).

The monograph estimates (page 2) that for the United States 45.6% of the total workers gainfully employed would be included in the class of compensable labor forces not ex-
[fol. 155] cluded by the Federal Act (without exclusion of carriers' employees subsequently exempted by the Alabama Amendment); for Alabama this percentage of the total gainfully employed in the nonexcluded groups is estimated at 30.4% (that is, 312,000 out of a total of 540,000 non-agricultural gainful workers, out of a total of all gainful workers of 1,026,000. This estimated percentage of gainful workers subject to the Act is below the national average due to the fact that a majority of the workers in Alabama gainfully employed are agricultural. This figure is not the Board's estimate of the number of workers actually to be covered but the total estimated compensable workers.

"A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed,

many of whom will eventually be covered through reemployment in employments that would be covered by the plan."

(Federal Social Security Board, p. 4).

The monograph sets out a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, under a plan assumed to have been initiated in 1933. For Alabama it is estimated at 204,000, or approximately 20% of the estimated total workers gainfully employed in the State in 1930.

"Utilizing the Bureau of Labor Statistics and the United States Censuses of Occupations and Unemployment of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the limited time [fol. 156] available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

"More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State."

(Federal Social Security Board, p. 6).

"It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turn-over of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for

such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan."

(Federal Social Security Board, p. 9).

"State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have an important bearing on the total amount raised. • • • Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies, drastic measures will have to be taken to maintain a system on a solvent basis."

(Federal Social Security Board, p. 10).

(4) I have been requested to present certain excerpts from public statements or releases having a possible bearing upon the common understanding as to the relationship between the tax and appropriation provisions of the Federal Social Security Act relating to old age benefits and unemployment insurance:

[fol. 157] (a) Statement by the President in address broadcast from New York October 31, 1936 (text being taken from New York Times for November 1, 1936, page 36), relating to Federal Social Security Act:

"They tell the worker his wage will be reduced by a contribution to some vague form of old-age insurance. They carefully conceal from him the fact that for every dollar of premium he pays for that insurance, the employer pays another dollar. That omission is deceit.

"They carefully conceal from him the fact that under the Federal law he receives another insurance policy to help him if he loses his job and that the premium of that policy is paid 100 per cent by the employer and not one cent by the worker. They do not tell him that the insurance policy that is bought for him is far more favorable to him than any policy that any private insurance company could afford to issue. That omission is deceit.

"They imply to him that he pays all the cost of both

forms of insurance. They carefully conceal from him the fact that for every dollar put up by him his employer puts up three dollars—three for one. And that omission is deceit.

"But they are guilty of more than deceit. When they imply that the reserves thus created against both these policies will be stolen by some future Congress—diverted to some wholly foreign purpose, they attack the integrity and honor of American government itself. Those who suggest that are already aliens to the spirit of American democracy. Let them emigrate and try their lot under some foreign government in which they have more confidence."

(b) Text of page advertisement purporting to be written and paid for by The Democratic National Committee, Hotel Biltmore, New York City, omitting caption and table:

"You Can't Lose Because—You get more than you put in. No matter when you die, you and your family get all you paid in and more. If you live to 65 years, you get a pension three times bigger than you could get from any insurance company at the same rate.

[fol. 158] "The Social Security Act is the greatest insurance bargain ever offered.

"The Act provides aid to the blind, dependent mothers and crippled children. No tax is imposed on your pay envelope to pay for this aid.

"The Act provides insurance against unemployment. No Federal tax is imposed on your pay envelope for these pensions.

"It gives every worker in this country what private insurance companies call a *combination life and annuity policy.*

"The law makes the employer pay half the cost of this policy. The worker pays the other half.

"Thus you get back more than you pay in.

"If you die before 65, the insurance goes to your family.

"If you reach 65, you retire on the kind of an annuity only the well-to-do can afford to buy as private insurance, because the premiums to a private insurance Company for the same protection would be from *three* to *five times as much* as you pay to Uncle Sam.

"All of the above facts also apply in the case of a woman worker. Marriage does not affect a woman's right to the annuity for which she has paid. If she dies before reaching annuity age, the amount to which she is entitled goes to her estate.

"Existing private pensions are not affected in any way by the law.

"Your employer must match dollars with you to make your old age safe from want

This advertisement written and paid for by "The ~~Democratic~~ National Committee, Hotel Biltmore, New York City."

(Chicago Tribune, p. 4, Nov. 2, 1936)

[fol. 159] (c) Excerpt from address by Hon. Robert F. Wagner, U. S. Senator from New York, who introduced and reported the Federal Social Security Bill in the United States Senate, broadcast from New York, Monday night, November 2, 1936:

"The truth is that the Social Security Law is increasing tremendously the compensation that the worker receives for his services, and I shall tell you how. First of all, let us take the old age insurance system, under the Roosevelt Social Security Law it is designed to spare the worker of today from the humiliation of charity in his old age to assure him of dignified and substantial monthly insurance payments when he retires at the age of sixty-five. This insurance system is an absolutely sound system, backed by a fund in the U. S. Treasury. Into this fund the worker pays regular premiums, just as he would pay premiums if he bought an old age insurance policy from a private insurance company, but there is this tremendous difference: For every dollar that the worker pays into this old age insurance fund, his employer is required to add another dollar and both dollars belong to the worker.

"In addition, the whole cost of administering the system is paid for by the Government. As a result, each worker gets a vested and certain right in an old age annuity that is two and one-half times as great as he pays for. It is his absolutely and if he does before reaching the age of sixty-five, it will be paid to his family. The

constant flow of money into the worker's insurance account to protect him when he grows old is his first pay increase under the Social Security Law.

"Secondly, the law provides for unemployment insurance that does not cost the worker a single penny. It is paid for entirely by the employer and the money that the employer pays into a fund to care for the worker when he loses his job, that is the worker's second pay increase under the Social Security Law.

"Now to sum up, in order that I may be perfectly clear under both unemployment insurance and old age insurance, what does the worker contribute to his own fund?

"He pays a premium of one dollar for every one hundred dollars of wages he obtains. What does the em-
[fol. 160] ployer contribute? The employer pays two dollars for every dollar the worker contributes. Who gets this money? Both the worker's dollar and the employer's two dollars are paid to the worker in the form of unemployment insurance and old age insurance. Is that all the worker gets? No, he gets the earnings on the old age pension fund.

"That, briefly, is why I say that the Social Security Law means a pay increase to the wage earners of America.

* * * * * * *

"They say that the funds for old age and unemployment insurance are not safe. They insinuate that the insurance fund will be stolen by the United States Government; that is a brazen falsehood. * * *

"This is the first time in American history that any reasponsible person has tried to besmirch the good faith of the American Government. It is a last desperate maneuver of the Republican opposition that the American people will indignantly repudiate."

[fol. 161] Administrative Interpretation of Power of State to Appropriate for Direct Relief. See Constitution, Sec. 93

No instance has been developed by checking the statutes for the past ten years of any direct appropriation by the State for the relief of destitution or unemployment or for private relief not connected with service of the State or

arising out of some mistake, act or negligence involving the State.

A review of administrative acts since the onset of the current depression and cycle of unemployment discloses the following representative expressions or practice.

(5) I have been requested to excerpt the facts ascertainable from the files of the Governor's office set out below, relating to the attitude of the State of Alabama to direct relief of destitution or hardship resulting from unemployment both during the depression and in general.

(a) In response to the provisions of Section 1 of Title I of the Federal Emergency Relief and Construction Act of 1932 (15 U. S. Code, Sec. 605-a), the Governor and the various relief agencies in the State concerned with destitution and unemployment presented sundry applications to the Reconstruction Finance Corporation. For convenience, condensed reference is made to this measure in the footnote. * These applications were presented through the

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* Section 1 of the Act related to the relief of destitution, and made available to RFC $300,000,000 "to be used in furnishing relief and work relief to needy and distressed people, and in relieving the hardship resulting from unemployment," to be available for payment to the Governors of the several states upon application by them in accordance with the Act, viz., upon a showing that the funds and resources of the State and its public subdivisions and private contributions were inadequate to meet its relief needs. Section 1 (d) provided as follows:

"d) Nothing in this section shall be construed to authorize the corporation to deny an otherwise acceptable application under this section because of constitutional or other legal inhibitions or because the State or Territory has borrowed to the full extent authorized by law. Whenever an application under this section is approved by the corporation in whole or in part, the amount approved shall be immediately paid to the governor of the State or Territory upon delivery by him to the corporation of a receipt therefor stating that the payment is accepted subject to the terms of this section."

Section (e) authorized the Governor to transfer the Federal aid money to any municipality or political subdivision.

[fol. 162] Governor. Accompanying the first application, dated August 15, 1932, which related to funds for direct relief and work relief for the City of Birmingham and Jefferson County, the Governor forwarded with the appliion an explanation in the form of the letter accompanied by a copy of the Proclamation of the Governor dated August 4, 1932, calling an extraordinary session of the Legislature to convene August 16, 1932. With reference to the subject of relief of destitution or unemployment the following clauses were inserted in the call:

"11. To provide that any county or municipality in the State may directly contribute of its public funds for the relief of unemployment, or for taking care of the unemployed and the destitute, in any manner that the municipality or county may see fit; to authorize any municipality or county to borrow money from the Reconstruction Finance Corporation, or from any other source, for the purpose of taking care of the destitute or for giving employment to the destitute or unemployed, and to provide for ratifying and making legal any payments that may have been made by counties or municipalities in relief work or in giving jobs or employment to the destitute or unemployed.

• • • • • • •

"17. To provide any legislation that may be necessary to permit the State to secure the full benefit of the emergency relief and construction act of 1932, passed by Con-[fol. 163] gress and approved by the President of the United States July 21, 1932; and to provide such legislation as may be necessary or proper to permit any municipality or any county of the State to secure the full benefit of said Act; and to provide such legislation as may be necessary or proper to authorize corporations to be formed and regulations to be provided for such corporations in order that such corporations may receive the benefit of the provisions of the said act; and to provide any legislation which may be necessary and proper for the said act to be taken advantage of in any way in the State of Alabama."

The call also included the following clause:

"14. To provide for the payment of Alabama's current debts; for construction and maintenance of public roads;

for matching Federal road funds; for keeping our schools open and the salaries of the teachers paid promptly; for reducing salaries, wages and appropriations; for abolishing useless offices and departments; for consolidating departments and for balancing the budget of the State."

The answer to questionnaire set out in RFC Emergency Relief Bulletin No. 1, August 2, 1932, issued in the administration of the Federal Act above mentioned, returned with the Governor's application made on account of the City of Birmingham and Jefferson County, contain this statement:

"(2) (a) The City and County have made commitments in aid of relief work, and notwithstanding lack of authority or doubts as to their authority, to the extent of $105,000 in respect to expenditures which are past due. • • •

"(c) There is no relief to be expected under existing law from State government funds • • • and the local relief agencies have been advised by the Governor that it is not possible for the State to participate in direct relief, as a result of both the condition of the State treasury and of constitutional inhibitions. • • •

"(e) There are no other sources from which relief may be expected except such funds as may be made available under the Emergency Relief Act. • • •

"III. There has been no emergency action to provide relief funds taken by the State since January 1, 1931. The State is inhibited by constitutional limitations. • • • Relief in the industrial areas through action of [fol. 164] the Legislature or amendment of the Constitution will be seriously handicapped by the unwillingness of the people to remove constitutional limitations. In the majority of the counties of the State, although grave want, unemployment and even destitution exist, the people as a whole are not in danger of starvation, and it will be difficult if not impossible to obtain a ratification of constitutional amendments which would remove the limitations upon the industrial counties, where the destitution is ominous.

"Unless relief is immediately forthcoming, the relief agencies in the City of Birmingham and Jefferson County

will be forced to suspend their relief work and no alternative can be expected other than wholesale starvation or disorder. The suspension of this service would mean that approximately 10,000 families, consisting of 50,000 people, or one-seventh of the population of the County of Jefferson, would be without food or any source from which it could be obtained.

"The foregoing is the existing situation as to organized relief agencies, which does not by any means reflect the total of destitution in Jefferson County. Numerous employers or former employers of labor are extending credit, not reflected in the above report, as are practically all citizens of the County in position to respond to direct appeals. The standing under-employed (below the margin of sustenance) are estimated at 40,000 heads of families, reflecting an ominously large proportion of the total population of the County."

Proposed Amendment to Constitution

By Joint Resolution (No. 11, Acts Ex. Sess. 1932, p. 12), passed by the House of Representatives August 30, 1932, and by the Senate September 6, 1932, there was submitted to the electors a proposed amendment to the Constitution to authorize counties and municipalities to borrow money from the RFC under the Emergency Relief and Construction Act of 1932, even if in excess of their Constitutional debt limits, and use of funds in furnishing relief and work relief to needy and distressed people, and in relieving the [fol. 165] hardships resulting from unemployment, etc. The proposed amendment also included the following clause:

"Each municipality and each county in the State is authorized to appropriate funds for furnishing relief and work relief to needy and distressed people and to relieve the hardships resulting from unemployment, and any appropriation that may have heretofore been made by any municipality or county is hereby declared to be legal."

This submission followed very general expression of doubt by county authorities and County Attorneys as to the validity of the use of County funds for direct relief. This amendment was submitted to the electors at the elec-

tion held November 8, 1932, and was rejected by a vote of — for and — against the proposed amendment.

Following the rejection of this amendment the Legislature promptly enacted by Act No. 289, approved November 14, 1932 (Acts 1932, p. 283) a law to enable County authorities to make provision for the care of the poor and needy by statute reading as follows, effective immediately:

> "SECTION 1. That the Court of County Commissioners, the County Board of Revenue, or other governing body in any County shall have the power and authority, with the approval of the State Child Welfare Department, to make other or further provision for the care of the poor and needy of each or either of the counties. The disbursement of any funds to be made through such agencies and in such manner as may be approved by the State Child Welfare Department."

Counties had previously been authorized by Act No. 339, approved July 2, 1931 (Acts, 1931, p. 397), to make appropriations of funds "to be expended by the County Board of Child Welfare for the relief of children under eighteen (18) years of age."

[fol. 166] [NOTE.—An Act for the aid of crippled children by authorizing the State Board of Education to comply with the provisions of the Federal Social Security Act, and to extend the service now maintained by the State Board of Education for locating crippled children, was adopted in 1935 (Acts 1935, p. 870).]

The statutory provisions in Alabama in addition to the foregoing in relation to the relief of destitution include the following grants of authority to counties. There has been discovered no statute purporting to authorize any state office, board or department to disburse state funds for direct relief of destitution.

(a) With the additional provisions herein mentioned, Section 6755 (13) of the Code, which has been in effect for many years in Alabama, makes provision for the only authority granted to the counties in relation to the relief of destitution or unemployment (that is, paupers or indigent persons), not in excess of $6.00 per month, other than through the general pauper laws contained in Chapter 50

of the Code (Sec. 2787 et seq.). See Michie's Code, Section 2806, note.

Prior to the Code of 1907, Commissioners' Courts in Alabama had been vested with a discretion in the application "of the well recognized power for the relief of paupers within their jurisdiction"; but by sections new to the subject in the Code of 1907 (Section 1607) this power was limited to temporary provision for one month "and then [fol. 167] only in cases of emergency." The intent of the statute, as asserted in State v. Mims, 174 Ala. 233, at p. 235, from which the above quoted phrases are excerpted, was further confirmed by the provision of Section 1603, whereby the Commissioners' Courts are commanded "to prevent the poor from strolling from one district to another." These sections of the Code of 1907 (1603 and 1607) are found as sections 2792 and 2796 of the present Code.

The Extra Session of the Legislature in 1933 made no further provision relating to the matter of direct relief of destitution or unemployment with respect to State, counties or municipalities.

Nor is any direct legislation upon the matter found in the Acts of the Legislature for the sessions held in 1935 and 1936. By Section 18 of Act No. 19, approved January 31, 1935 (Acts 1935, at p. 35), relating to the imposition of an additional excise tax upon the storing or withdrawal of motor fuels, etc., it is provided that:

> "That the proceeds from one cent of said tax herein levied may be used by the Governor of the State of Alabama at any time within twelve months from the approval of this Act for the purpose of matching any United States Government funds on any fair and reasonable basis."

No one has challenged in the Courts the validity of the clause or the interpretation of Section 18 by the Governor or the delegation of power inherent in the clause, if it be construed as authorizing "matching" except in relation to federal aid of highway construction.

[fol. 168] For many years there has been known in public administration in Alabama the practice of matching federal aid funds in relation to the construction of highways, since the adoption of the Federal Aid Law of July 11, 1916, to which the State assented by the Alabama High-

way Code adopted in 1927 (Acts 1927, p. 248, at p. 360; Michie's Code, 1927, Sec. 1397 (40)). The process of "Matching Federal Aid" in relation to the construction and maintenance of public roads in the State was included in the call for extraordinary session made by the Governor August 4, 1932, as quoted in Item 8 of the call, supra.

Under this Act it is understood that the Governor of Alabama during the twelve months period of his limited authority under the Act of January 31, 1935, above quoted, has made use of a portion of this fund to provide highway work intended primarily for relief, and that this application of the funds was accepted by the Federal authorities in the distribution of Federal relief monies as a contribution to depression relief by the State.

Inspection has disclosed no additional legislation which might have any bearing upon appropriation for poor relief or for direct aid for the relief of destitution or unemployment, other than an Act relating to hospital accommodations and services for the poor in counties having a population of not less than 75,000 nor more than 100,000 (Acts, S. S. 1932, p. 49).

———.

[fol. 169] STATE OF ALABAMA,
Jefferson County:

Before me the undersigned authority in and for said County and State personally appeared H. D. Warner who, being by me first duly sworn, deposes and says that the facts set out in the foregoing statement prior to numbered section (1) are true as of his own knowledge or have been compiled from the records of the Gulf States Paper Corporation under his direction and are true to the best of his knowledge, information and belief; that as to the matters and facts set out in numbered sections (1) and following, including sundry excerpts and reports, he is informed and believes that the same are correct.

H. D. Warner.

Sworn to and subscribed before me this 7th day of November, 1936.

L. J. Caran, Notary Public, Jefferson County, Alabama.

[fol. 170] EXHIBIT "A" TO AFFIDAVIT

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1930		
January	50	$9,758.19
February	49	8,875.60
March	49	9,715.26
April	49	8,941.27
May	55	9,640.06
June	55	9,435.39
July	57	9,868.92
August	56	9,791.21
September	54	9,618.48
October	55	9,666.00
November	55	9,634.17
December	55	9,779.58
		114,724.13
1931		
January	54	10,495.29
February	58	10,686.12
March	57	11,533.27
April	60	11,281.83
May	60	11,393.08
June	59	10,844.80
July	58	10,667.71
August	62	11,437.28
September	60	10,713.20
October	57	10,473.94
November	57	10,152.08
December	57	10,358.33
		130,036.93
1932		
January	57	11,575.30
February	57	10,470.53
March	57	11,014.17
April	56	10,724.24
May	55	11,035.58
June	54	10,180.63
July	57	9,565.01
August	58	9,791.20

*Does not include central office; approximately $90,000 for 1935.

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1932		
September	57	$9,329.40
October	58	9,217.82
November	57	8,945.21
December	59	9,260.14
		121,109.23
[fol. 171] 1933		
January	59	9,867.13
February	59	9,282.36
March	59	8,801.71
April	58	9,126.79
May	58	9,281.30
June	59	8,742.42
July	60	8,911.42
August	59	9,242.40
September	62	9,659.60
October	64	9,495.42
November	63	9,770.78
December	65	10,043.67
		112,225.00
1934		
January	67	10,623.79
February	66	10,351.83
March	66	10,883.59
April	67	11,461.61
May	66	11,724.88
June	66	11,211.33
July	66	11,278.08
August	66	11,430.97
September	67	11,675.14
October	70	11,307.55
November	69	11,380.07
December	71	11,503.88
		134,832.72

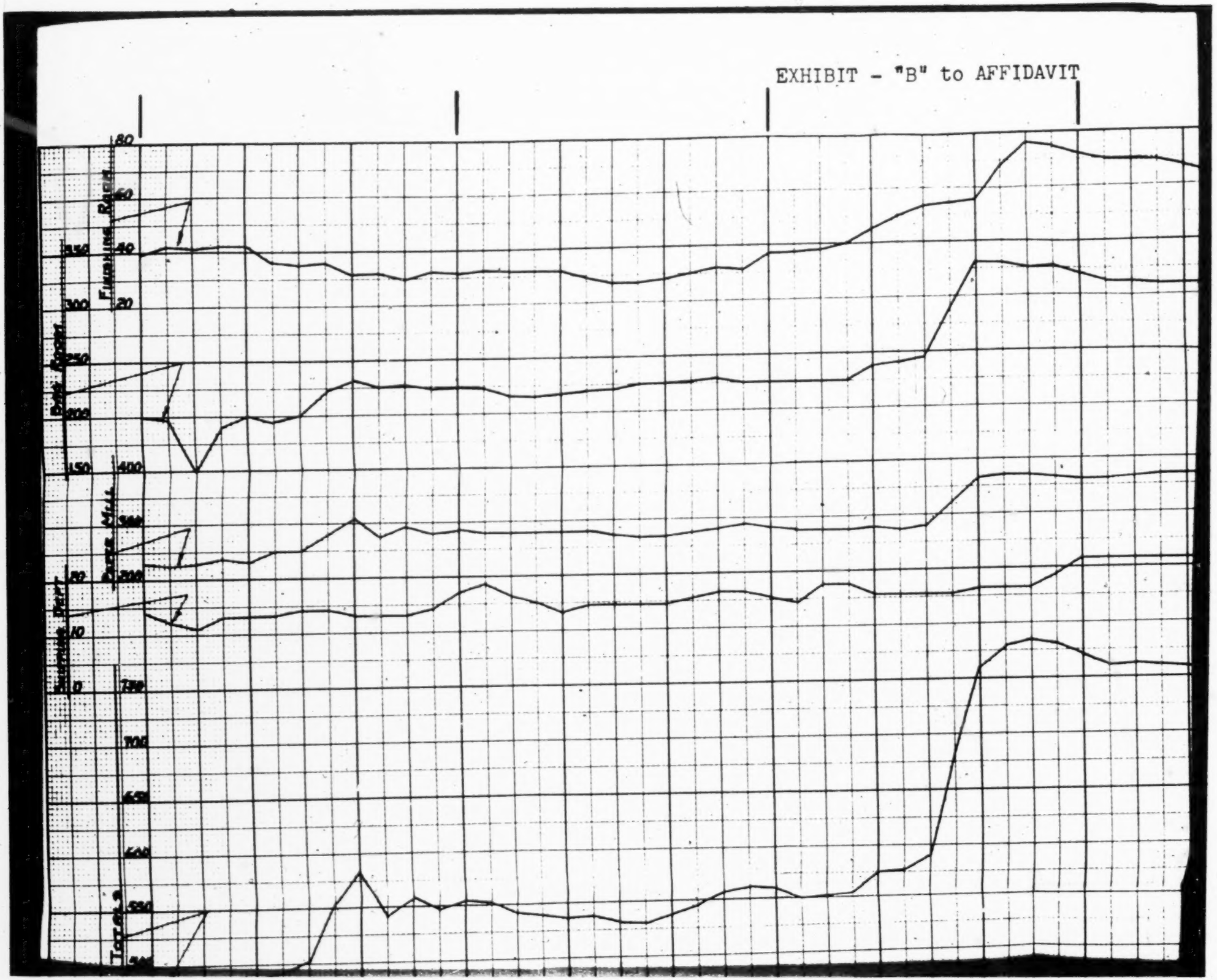
*Does not include central office; approximately $90,000 for 1935.

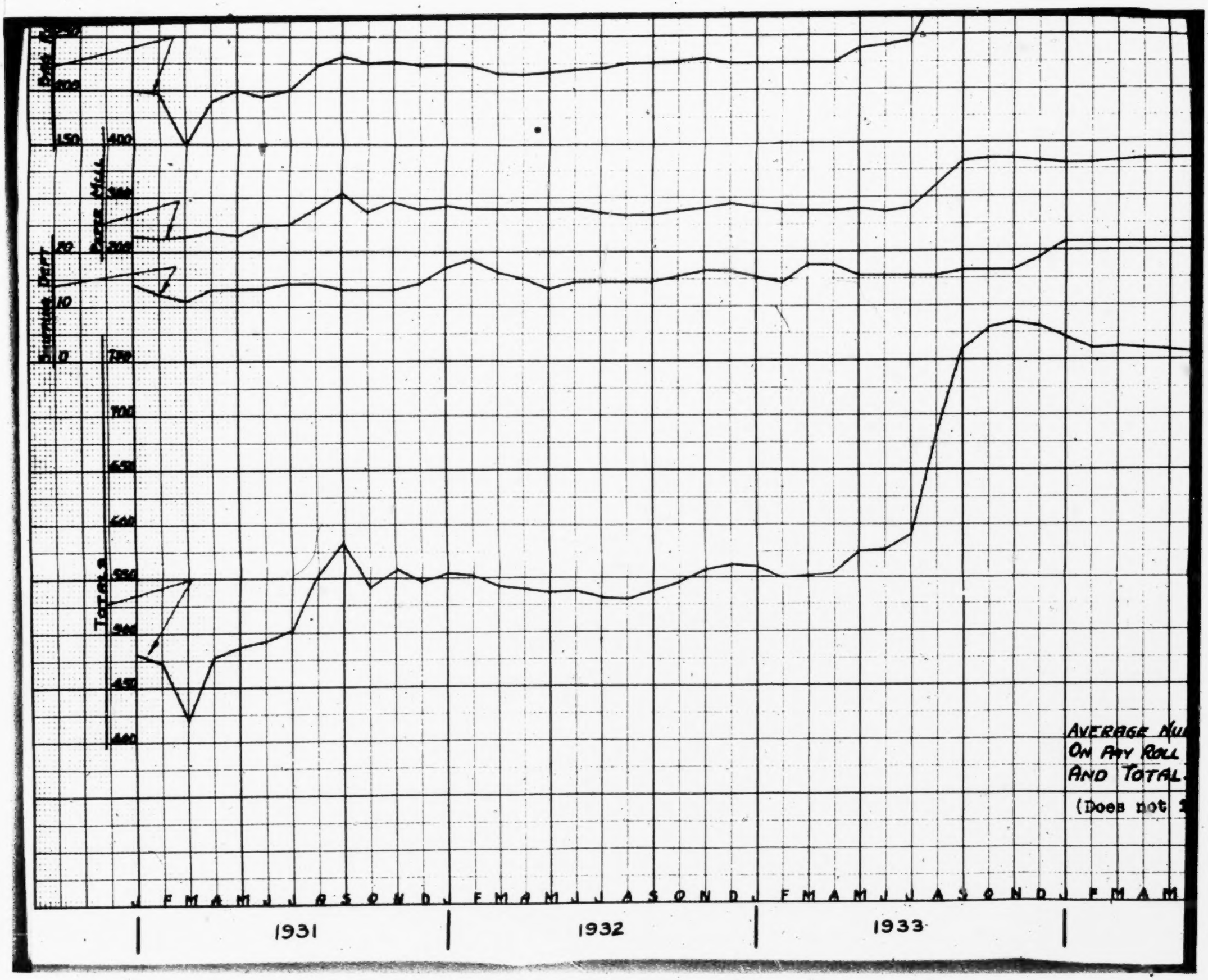
(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1935		
January	69	$11,942.93
February	69	11,654.64
March	69	11,580.12
April	71	13,307.99
May	69	12,076.03
June	70	11,844.64
July	74	12,143.71
August	74	13,497.31
September	74	12,629.70
Oetober	72	11,593.13
November	72	11,685.62
December	71	11,707.01
		145,662.83
[fol. 172] 1936		
January	72	12,119.20
February	72	12,551.94
March	72	11,923.20
April	73	12,317.77
May	74	14,062.58
June	72	11,902.81
July	71	11,987.15
August	71	13,368.14
September	73	12,951.31
October (through 15th)	71	5,789.44
		$118,973.54

*Does not include central office; approximately $90,000 for 1935.

(Here follows one photo, side folio 173.)

EXHIBIT - "B" to AFFIDAVIT

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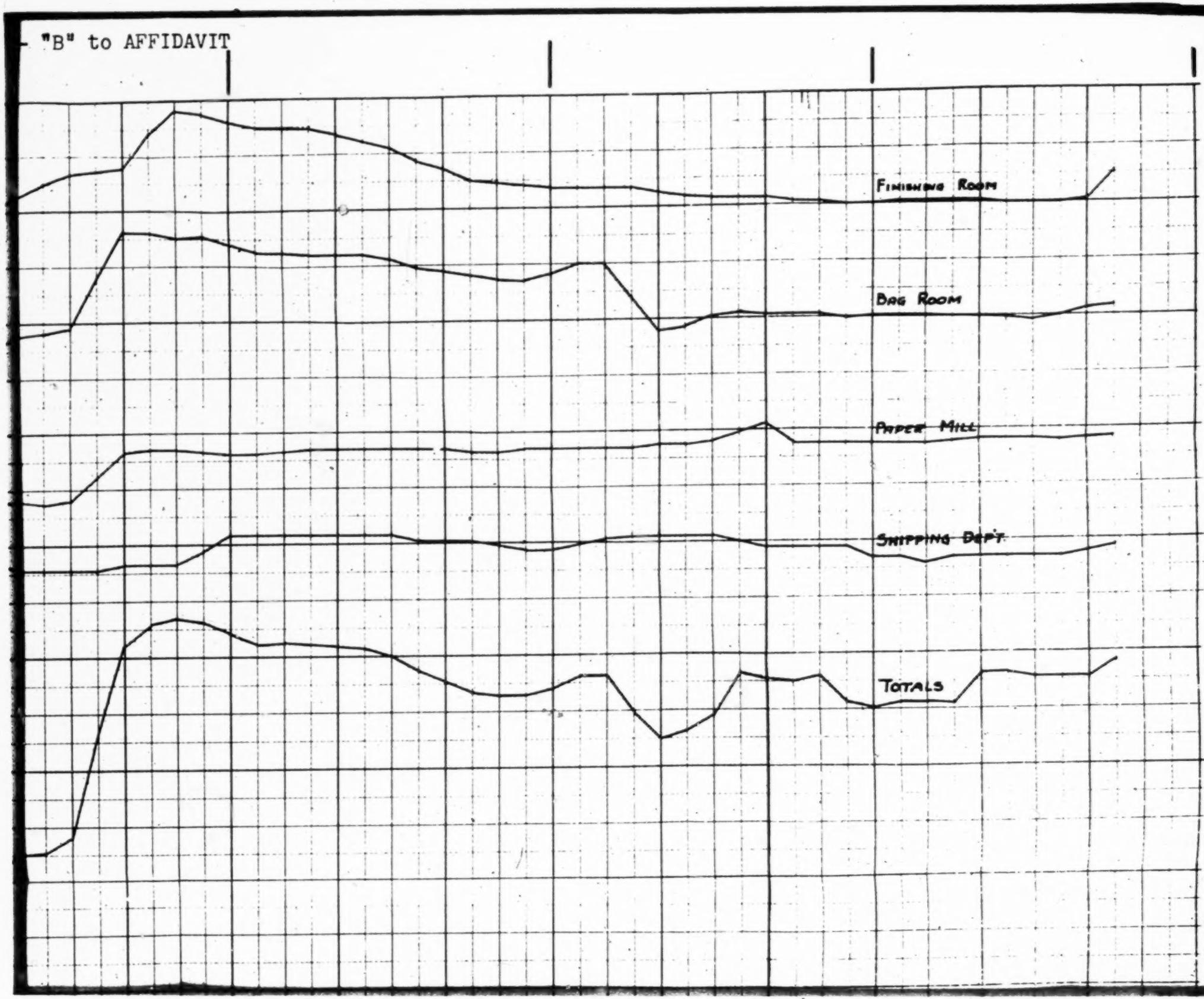

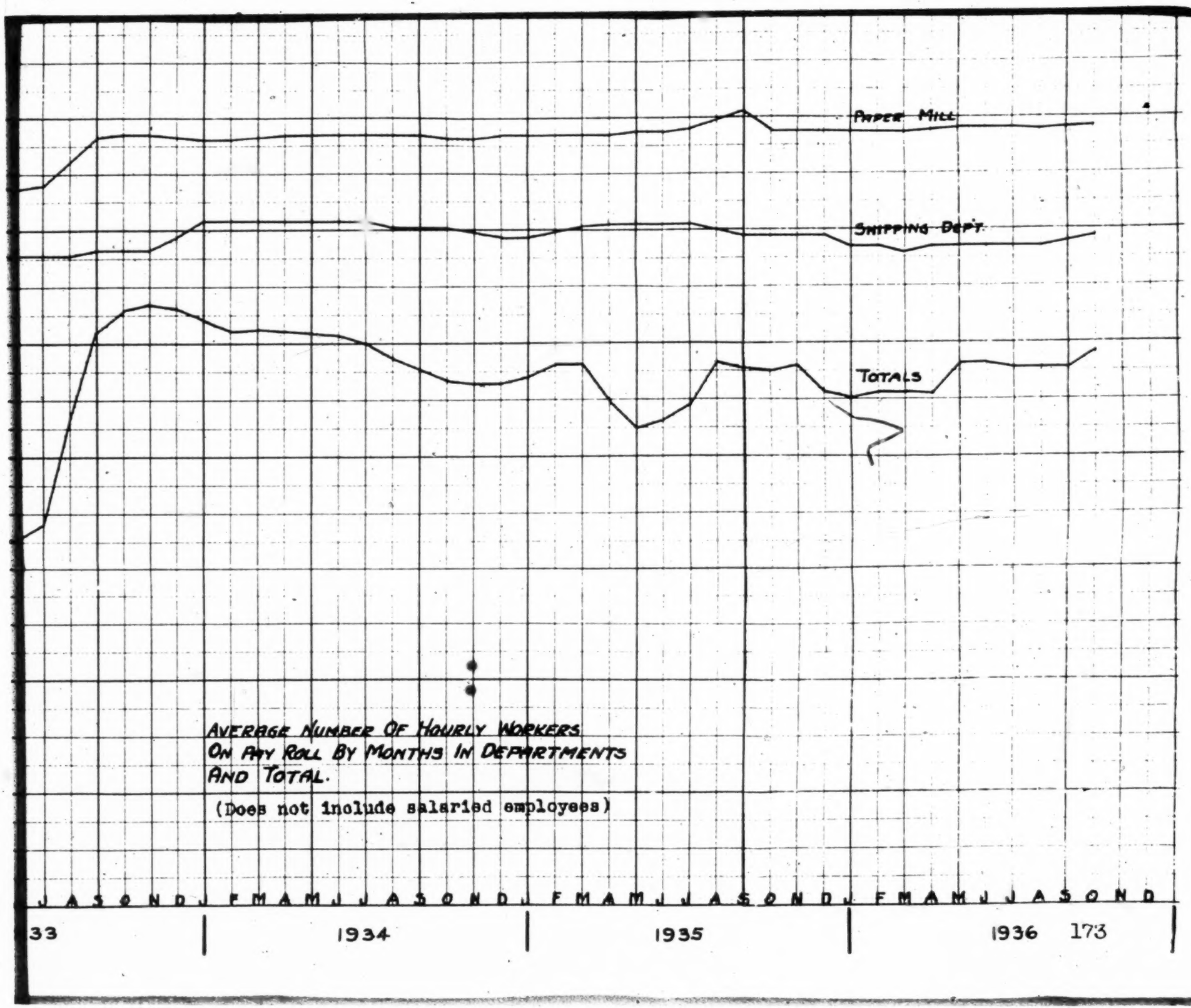
PAPER MILL
SHIPPING DEPT.
TOTALS
AVERAGE NUMBER OF HOURLY WORKERS
ON ANY ROLL BY MONTHS IN DEPARTMENTS
AND TOTAL.
(Does not include salaried employees)
J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D
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1936

[fol. 174] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HERBERT S. CRAIGMILE

Goodyear Tire and Rubber Company

My name is Herbert S. Craigmile. I am Personnel Manager of Goodyear Tire and Rubber Company. I have made investigation of its books and records as to employment, payrolls, and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

This Company is engaged in the business of manufacturing automobile tires at its plant at Gadsden, Alabama. At the present time it is employing 1560 workers. The following is a schedule of employment at the plant, showing average number of employees during each month since the plant began operation in August, 1929:

Employees per Month

	1929	1930	1931	1932	1933	1934	1935	1936
Jan.	...	1,087	960	829	686	771	928	849
Feb.	...	1,076	980	821	650	818	966	857
Mar.	...	998	1,029	815	638	836	971	941
Apr.	...	1,022	1,042	751	641	884	957	1,030
May	...	1,014	1,043	748	675	891	983	1,163
June	...	996	1,035	748	787	888	1,000	1,298
July	...	942	1,029	743	895	901	1,006	1,452
Aug.	1,195	911	1,021	736	872	846	986	1,549
Sept.	1,089	887	970	762	758	824	967	1,560
Oct.	1,035	849	924	759	720	817	883	...
Nov.	1,000	854	853	742	715	819	846	...
Dec.	957	863	779	734	716	872	840	...

Aside from the general drop in employment in the years 1932, 1933 and 1934, due to the general depression, employ-
[fol. 175] ment at the plant varies seasonally to a moderate extent, due to seasonal fluctuation in demand for the product.

An approximate schedule of the contributions to the Unemployment Insurance Compensation Fund which would have been made by the company and its employees at the schedules provided by the Act had the Act been applicable during the period shown is attached hereto marked Schedule A. This schedule shows that total contributions by the Company during a nine year period would have amounted to $246,000.00, and its employees would have paid during the same period $108,700.00, creating a total fund of $354,-700.00.

The total number of employees who left the service of the company for any reason, from January, 1930 through September, 1936, are shown by the following table:

	Voluntary Quits	Total Exits
1930	452	835
1931	176	483
1932	43	192
1933	49	303
1934	53	160
1935	74	270
1936	135	218

[fol. 176] Analysis has been made, by actual inquiry and investigation in approximately 131 individual cases, selected at random, of the cause and purpose of withdrawal from the company's employment, for the purpose of estimating the proportionate number and percentage of employees who would have been eligible for benefits, had the act been in operation since 1930.

While in my opinion there can be no exact computation of the amount of benefits which would have been payable, because of necessarily variant factors determining eligibility, involving every possibility of the employees' previous earnings and employment and subsequent disposition of his time and energy, the attached tables, marked Schedule B, Schedule C, Schedule D, are constructive applications of the benefit provisions of the Act to former employees of this company which present an approximate picture of what would have happened, based on the various assumptions stated.

In each calculation doubts have been resolved in favor of greater or maximum benefits.

The opinion as to the ratio of eligibles is based upon the study of the representative group of 131 actual exits. The further assumptions stated are explained in the tables.

A large percentage of the labor at this plant came from the surrounding rural territory. Many of the employees continue to reside upon farms, which continue to re-absorb a substantial proportion of the exits.

[fol. 177] It is, moreover, to be noted that the period reflected in the attached statements covers the period of the greatest and most prolonged depression of modern times, and can not be regarded as a normal test for unemploy-

ment to be expected for the period beginning October 1, 1938.

This Company's policies as to work and employment and their effect upon the life and welfare of the community have the approval of the city government and civic organizations in the area. Although necessarily dependent upon the current market for the product and therefore subject to some ebb and flow incident to the operation of the competitive American system of industry, the curtailment of employee personnel to adjust output to demand is not excessive nor too great for the area to absorb.

In the opinion of affiant, based on his knowledge of the facts, the by-products or indirect results of operation of the plant in the area have, even during the depth of the depression, more than supported employment in excess of the number of exits from the plant at any time seeking employment.

In the opinion of affiant, based on market studies and the business forecast of the management, the total and range of exits at this plant to be anticipated in the future will be materially less than has been the record during the depression period.

Herbert S. Craigmile.

Sworn to and subscribed before me, this 28th day of October, 1936.

Joseph H. Johnson, Notary Public.

[fol. 178] SCHEDULE "A" TO AFFIDAVIT

Estimated Contributions

(Assuming Act in Effect Starting January 1930)

Goodyear—Gadsden

		Total Payroll	Rate	Total Contributions to Fund
	1930	$1,047,363	1.9%	19,900
	1931	1,030,559	2.8	28,800
	1932	698,730	3.7	25,800
	1933	674,979	3.7	25,000
	1934	911,050	3.7	33,700
	1935	1,019,879	3.7	37,700
Approx.	1936	1,895,000	4.0	75,800
Est.	1937	1,800,000	3.0	54,000
Est.	1938	1,800,000	3.0	54,000
	Total 1930–1938			$354,700

Schedule "A" to Affidavit—Continued

		Employer Contributions	Employee Contributions
	1930	9,400	10,500
	1931	18,500	10,300
	1932	18,800	7,000
	1933	18,300	6,700
	1934	24,600	9,100
	1935	27,500	10,200
Approx.	1936	56,900	18,900
Est.	1937	36,000	18,000
Est.	1938	36,000	18,000
	Total	$246,000	$108,700

[fol. 179] SCHEDULE "B" TO AFFIDAVIT

Total Exits and Those Estimated to be Eligible for Benefits

(Goodyear—Gadsden)

		(1) Total Exits	(2) Excluding for known disqualifying conditions (100%–40%)	(3) Est. Eligible Exits (30%)
	1930	835	500	250
	1931	483	290	145
	1932	192	115	58
	1933	303	182	91
	1934	160	96	48
	1935	270	162	81
Approx.	1936	320	193	97
Est.	1937	375	225	113
Est.	1938	275	225	113

Col. (1) Exits for all causes.

Col. (2) The analysis of 131 exits indicates on the face of the known facts that not less than 40% of the total exits are under conditions subsequent which make them ineligible for current benefits under the Act. These known facts include no further investigation as to re-employment, part time re-employment, return to class of farm worker, study as to duration of previous employment. Applying an estimated factor for these unknown conditions, it is estimated that the number shown in Col. (2) would be reduced to 30%, as shown in Col. (3).

Col. (3) Estimated exits remaining eligible after deducting 40% from total exits for known percentage disqualifications disclosed by study of 131 exits, it is estimated that, on the average, a further 30% of the total would be ineligible because of re-employment, transfer to ineligible employment, part time employment, removal from the State, failure to register for re-employment, or to take employment offered, etc.; thus leaving a net total of 30% of total exits eligible for benefits.

[fol. 180] SCHEDULE "C" TO AFFIDAVIT

Weekly Earnings and Estimated Weekly Benefits

(Goodyear—Gadsden)

		Monthly Earnings	*Weekly Earnings	Maximum Weekly Benefits (50%)
	1930	$91.20	$21.05	$10.52
	1931	88.30	20.40	10.20
	1932	75.80	17.50	8.75
	1933	77.00	17.80	8.90
	1934	89.60	20.70	10.35
	1935	90.20	20.80	10.40
Approx.	1936	123.00	28.40	14.20
Est.	1937	120.00	27.70	13.85
Est.	1938	120.00	27.70	13.85

* Monthly earnings divided by 4-1/3 weeks.

[fol. 181] SCHEDULE "D" TO AFFIDAVIT

Estimated Unemployment Benefits to Former Employees Based on Various Assumptions

(Goodyear—Gadsden)

		(1) Maximum benefits possible applied to total exits	(2) Benefits on total exits for 17 weeks	(3) Benefits based on 60% of total exits. See Sch. B, Col. (2)	(4) Est. Actual Benefits based on 30% of total exits. See Sch. B, Col. (3)
	1932	$32,500	$29,400	$17,600	$8,800
	1933	58,820	46,350	27,800	13,900
	1934	38,420	27,200	16,300	8,150
	1935	70,800	48,200	28,900	14,450
Approx.	1936	112,000	76,100	45,700	22,850
Est.	1937	131,200	89,300	53,600	26,800
Est.	1938	131,200	89,300	53,600	26,800
Excess (or deficiency) of fund—$354,700 (See Sch. A):		574,940	405,850	243,500	121,750
		(def.) $220,240	(def.) 51,150	(excess) 111,200	(excess) 232,950

Col. (1) Based on total exits, at 50% of average weekly wage and assuming all the unemployed were eligible to participate in maximum benefits on the basis that the Act was effective January 1, 1930, and that the unemployed exits all started their employment at this time.

Col. (2) Based on total exits as in Col. (1) but assuming the unemployment period averages 17 weeks.

Col. (4) It is estimated that the percent of total eligibles to total exits would not reach 30% were it not for the fact that the necessary effect of the Act is to put a premium upon abstention from employment during the running of the benefit.

[fol. 182] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RICHARD H. CHILDERS

Moore-Handley Hardware Company

My name is Richard H. Childers. I am Auditor of Moore-Handley Hardware Company, an Alabama corporation which has conducted a wholesale hardware business located at Birmingham for over fifty years. The Company has been in continuous operation of its business without cessation during this period. During 1935 its employees ranged from a low of 364 in January, 1935, to 388 on December 31, 1935.

I have examined and am familiar with the Company's records and statistics relating to its payrolls, employment, exits from employment, and re-employment, with particular reference to the years 1933, 1934 and 1935; also its payrolls for the two years prior to 1933; and also the records neces-

sary to the exact determination of the original date of continuous employment of those who left the service of the company during 1933, 1934 and 1935. This study was made for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company based on the years 1933, 1934 and 1935.

The problem of unemployment has borne nominally upon this Company because of the fact of its continuous opera- [fol. 183] tions and the adoption of a policy during periods of recession in gross sales to continue as far as practicable its regular employee personnel. Thus during the most severe test to which the Company in its entire history has been subjected, namely the low spot in the depression beginning in 1929, the recession in the number of employees did not follow the recession in the Company's sales. This is illustrated by the following comparison:

	1927	1932	Decrease
Sales	$7,720,480.24	$2,931,897.27	62%
Number of Employees (Dec.)	380	290	24%

In order to apply constructively the Act to the three actual years selected for analysis (1933-34-35), I have checked the records as to each of the regular employees who left the service for any cause during the years stated, numbering 29 for 1933, 24 for 1934, and 45 for 1935, and have ascertained in each case the circumstances under which the employee left the service. By ascertainment of the actual figures in each case, it has been practicable to determine with a reasonable degree of accuracy the extent to which these former employees would have become eligible under the definition of the Act to receive standard or extended benefits under its terms. In each case where doubt existed as to the amount of the benefit which would have been payable, we have estimated the benefit at the maximum permitted under the Act. In order to determine whether or [fol. 184] not the employees leaving the service would be entitled to extended benefits, the duration of their service with the company was checked and extended compensation was allowed on the maximum basis ($15 per week) for the extended weeks of service contemplated by the Act.

The result of this analysis is set out on the following table:

Total weeks of benefit payable for unemployment starting in		Total benefits
1933	255	3,825.00
1934	159	2,385.00
1935	209	3,135.00

If it be assumed that approaching 1933 the Act had been in effect for five years, and that the average rate of contributions applicable to industry as a whole were then applicable (3% against the employer and 1% against the employee), the following would show the accumulation in the fund and the excess of contributions over benefits payable to the former employees of this Company, based upon the assumption of eligible unemployment in all cases where not [fol. 185] specifically excluded by the analysis of our records:

Year	Net payroll on which contributions payable	Total contributions at 4%	Excess over benefits
1933	$466,559.10	$18,662.36	$14,837.36
1934	568,362.23	22,734.49	20,349.49
1935	621,216.03	24,848.64	21,713.64
		$66,245.49	$56,900.49

I have considered the matter of the cost of the necessary clerical service and records to keep and compile the statistics and make the reports which would be required of the company under the administration of the Act. In my opinion it would be not less than $2,000 annually. The keeping of the necessary records and the making of the necessary reports contemplated by the rules promulgated by the Commission will in my opinion require the full time services of an accountant or statistician of good ability, and in my opinion the estimate of $2,000 is conservative as applied to businesses employing from 200 to 500 employees.

The matter of the bearing of the Unemployment Compensation Act upon the policy of this Company has been discussed by the management, and I am able to state that on account of the duplication of cost which would be involved in the compulsory contribution to the compensation fund, with no tangible or appreciable benefit to the com- [fol. 186] pany, it would be necessary for the company to curtail its payrolls in periods of diminished activity rather than stand the expense of making sacrifices to continue the employment in accordance with the policy which has been heretofore established.

This Company's ad valorem, income and franchise and merchants license taxes, constituting all of the taxes paid by the company for the support of the State, County and City governments, amounted to an aggregate of $143,831.81 for the three years, and the company's tax for the support of the federal government (income and capital stock taxes) over the same period, 1933-1935, amounted to an aggregate of $56,653.80. Had the full average levy made against employers subject to the Act in the aggregate (3% during and after 1941) applied to the company's payrolls during 1933, 1934 and 1935, the amount of the aggregate contribution for the three years would have been $44,164.12, which added to the employee levy of 1% would have resulted in a total impost against this unit of industry for one single social objective amounting to 46% of its total direct contribution for all functions and objectives of State, County and City governments and 117% of its total direct contribution for all functions and objectives of the federal government.

Richard H. Childers.

Sworn to and subscribed before me this 17th day of November, 1936.

Minnie Daniel, Notary Public, Jefferson County, Alabama.

[fol. 187] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ALEX C. WELLMAN

Protective Life Insurance Company

My name is Alex C. Wellman. I am Vice President of Protective Life Insurance Company. The home office of the Company is in Birmingham, Alabama.

I am an actuary, and am accustomed to the compilation and analysis of statistics and statistical data. I have been engaged in performing the functions of actuary and statistician for eleven years. I have made investigation of the books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

Assuming that the benefits to be paid under the Act to employees subject to the Act who may become eligible

under its terms are deferred until approximately October 1, 1938, I am of the opinion, based on my information of the available statistical data and my analysis of the conditions subject to which the benefits are payable, that it is not practicable to arrive at even an approximate accurate conclusion as to the amount of withdrawals which will be made by eligibles under the Act.

My reason for the conclusion stated is, first of all, that the amount of unemployment cannot be projected; that [fol. 188] basic data is lacking for the study of unemployment, its origin and duration as applied to individual employees, and that there is such a multiplicity of variables involved in the individual equation of unemployment, that no estimate can be projected two years into the future.

Even if unemployment data were available for any given period it would not be adequate for actuarial calculations to apply to future periods. The impact of unemployment is more acute on the down curve of a general depression. General depressions are cyclical and unpredictable both as to their severity and duration. Apart from the pool of floating unemployed characteristic of industry in Alabama, in the case of most of the employers reduction of personnel and consequent unemployment is usually small or negligible, succeeded by unpredictable periods of general unemployment. Funds that might be necessary and sufficient for what might be termed the normal periods of unemployment or referable to the floating pool of unemployed would be wholly inadequate on any basis of limitation for a general and continued period of depression, or to meet the adjustment of sharp changes in employment policy such as might result from the adoption of changed hours of service and radical increases in personnel such as resulted from the inauguration of the President's agreement and NRA require- [fol. 189] ments. For these reasons, fully applicable to employers and employees in Alabama, it can be asserted that there is no method of estimating the amount of reserves that would be necessary to be built up to meet adequately a general period of unemployment.

Even if basic statistical data were available as to withdrawals or average withdrawals in particular plants or in the aggregate in the State, it would not be practicable to set up or predict an average prospective unemployment period applied to the number for the time being unemployed, or even to guess remotely what steps individuals

would take to obtain employment or how individuals would employ their time.

During the general depression a large number of unemployed have had recourse to their original homes or vicinities on farms. This tendency to make use of the farm as a cushion to absorb unemployment is illustrated by the increase in the number of farms in Alabama from 257,395, as reported by the United States Census for 1930, to 273,455 in the year 1935. No one can foresee what effect the Alabama Unemployment Compensation Act would have upon this tendency to fall back upon the farms in periods of unemployment.

Moreover, each condition prescribed by the Alabama Unemployment Compensation Act for the receipt of benefits under the Act has elements that are unascertainable and [fol. 190] unpredictable, such, for instance, as the following:

(1) The full time weekly wage of the person becoming unemployed. The "full time weekly wage", as defined by the Act, does not correspond with the wages actually paid the particular employee upon which his and the employer's taxes were based. The Act computes the full time wage on a constructive basis by expanding his average unit wage to full time employment.

(2) It cannot be foreseen how many employed persons, prior to their unemployment, will have been engaged for the necessary number of weeks to qualify for initial or extended benefits.

(3) It cannot be foreseen whether how many employed persons would supplement their unemployment by partial employment.

(4) It cannot be foreseen whether such employed persons, or how many of them, would become farm employees or otherwise become ineligible for benefits under the fund.

[fol. 191] It is practicable to apply the Act constructively to some individual plants or businesses, predicated, however, upon stated assumptions, and upon past record of employment and payrolls. Thus, in the case of the Protective Life Insurance Company, practically no unemployment has resulted which would have made former employees of the Company eligible for the receipt of benefits under the

Act had it been in effect during the period 1930 to date. This will be illustrated by the following table showing the number of employees by months for the six years ending December 31, 1935.

Number of Employees by Months for Six Years Ending December 31, 1935

	1930	1931	1932	1933	1934	1935
January	68	76	81	88	96	91
February	67	79	82	90	93	90
March	69	85	85	96	97	91
April	67	83	84	97	96	93
May	64	85	85	95	96	95
June	67	85	82	93	94	93
July	64	85	82	94	94	96
August	68	86	84	97	98	89
[fol. 192]						
September	75	90	84	96	97	91
October	74	85	85	95	95	93
November	77	81	85	97	94	93
December	76	81	84	95	93	93

While this table shows the net number and does not indicate the number which at any given time left the employment, the statement may be made that the number leaving the employment over the period stated, except as a result of death or under circumstances which would not have made them eligible for benefits under the fund, is nominal if in fact any single employee would have become eligible during the entire period.

An analysis of these figures and of the facts under which this Company's personnel changes from time to time makes it clear that the application of the Alabama Unemployment Compensation Act would result in no tangible or appreciable distributions to employees or former employees of this Company, and such benefit as the Company might experience in return for its contributions to the fund would be such only as would be experienced by the public as a [fol. 193] whole.

Alex C. Wellman.

Sworn to and subscribed before me, this 17th day of October, 1936.

L. J. Caran, Notary Public.

[fol. 194] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HERBERT S. SALMON

Bituminous Coal Industry

My name is Herbert S. Salmon. I have for several years represented the entire commercial bituminous coal industry or substantial sections of the industry in Alabama by reason of official connection with the Divisional Coal Code Authority under the National Recovery Administration, having been designated and acted as Presidential Member of the Divisional Code Authority during the life of the NRA Code, and having been Chairman of the Bituminous Coal Producers Board under the so-called Guffey Act until those measures were annulled by the United States Supreme Court. Since the annulment of the latter I have been President of Alabama Coals, Inc., an agency organized by certain of the coal producers in Alabama in accordance with the decision of the Supreme Court in the Appalachian Coals Case.

As a result of reports compiled from the various producers of coal in Alabama during the period of the NRA Code and Guffey Act administration, I am generally familiar with the statistical data of the industry in Alabama. Much data is available to me through the reports made by the units in the industry to the federal authorities and to the district boards mentioned above; from official or semi-official reports to the State Mine Inspector of Alabama; from reports issued by the U. S. Bureau of Mines and from reports issued by the U. S. Department of Labor.

[fol. 195] Based on this data I am able to give the annual production of coal in Alabama by tons for 1923-34; the average days operated by the Alabama mines for 1923-34; the increase or decrease of employees for 1923-34; and to estimate therefrom total wages for the same period. This data is set out in Table I.

Table I.—Statistical Data, Bituminous Coal Industry of Alabama

Year	Annual production (tons)	Days operated	Average number employees	Increase or decrease in employees each year	
				Inc.	Dec.
1934	9,142,000	185	18,851	614	
1933	8,700,000	148	18,237	....	2206
1932	7,857,000	107	20,443	....	2530
1931	11,999,000	136	22,973	....	1420
1930	15,570,000	189	24,388	....	815
1929	17,944,000	231	25,208	....	500
1928	17,621,000	222	25,708	....	1907
1927	19,765,000	231	27,615	270	....
1926	21,000,000	266	27,345	248	....
1925	20,004,000	246	27,097	....	859
1924	19,130,000	220	27,956	....	2079

I am able to say that no data exists from which an accurate constructive application of the Alabama Unemployment Compensation Act could be applied even to past years, for the reason that no record is available as to the number of employees who left the service of the respective employers or the conditions accompanying their leaving or the amount of their "full time weekly wage" as provided by the Act, at their last employment, or what credits if other-
[fol. 196] wise eligible would have applied against the $15 per week maximum compensation, or whether they would have been eligible for the full sixteen weeks of the maximum initial benefit period, or for any extended benefits. These uncertainties prevent accurate application of the Act to a past period without involving enormous and in fact impracticable research as to each employee leaving the service, and such application is no less impracticable for the period beginning two years hence, as contemplated by the Act.

Nevertheless there can be ascertained with reasonable accuracy the amount of the contributions which would have been paid by the industry had the Act been in force for the period 1923 through 1934.

If net increase or decrease in employment as applied to the industry as a whole be regarded as the test of eligibility to benefits, and if it be assumed that the net recession in the number of employees indicated eligibility for the entire number for the full initial period of sixteen weeks and at the maximum of $15 per week, then the withdrawals of benefits from the fund can be calculated approximately. The result is as set out below in Table II, assuming a contribution equal to the schedule provided by the Act, and

applying for the fifth year the average minimum of 3% levied upon coal mine employers in the aggregate subject to the Act plus a flat 1% levied upon the employees.

[fol. 197] Table II.—Estimated Wages, Taxes and Payments

Year	Increase or decrease in employees each year: Inc.	Increase or decrease in employees each year: Dec.	Total wages	Tax	Payments based on $15 per week for 16 weeks
1934	614	....	$12,762,000	$510,480	....
1933	....	2206	6,451,000	258,040	529,440
1932	....	2530	6,561,000	262,440	607,200
1931	....	1420	11,277,000	451,080	340,800
1930	....	815	17,241,000	689,640	195,600
1929	....	500	22,535,000	901,400	120,000
1928	....	1907	22,828,000	913,120	456,080
1927	270	....	26,409,000	1,056,360	....
1926	248	....	30,114,000	1,204,560	....
1925	....	859	27,730,000	1,026,010	206,160
1924	....	2079	25,707,000	719,796	498,960
1923	1866	....	28,220,000	536,180	....
				8,529,106	2,954,240
Excess Collections					5,574,866
				$8,529,106	$8,529,106

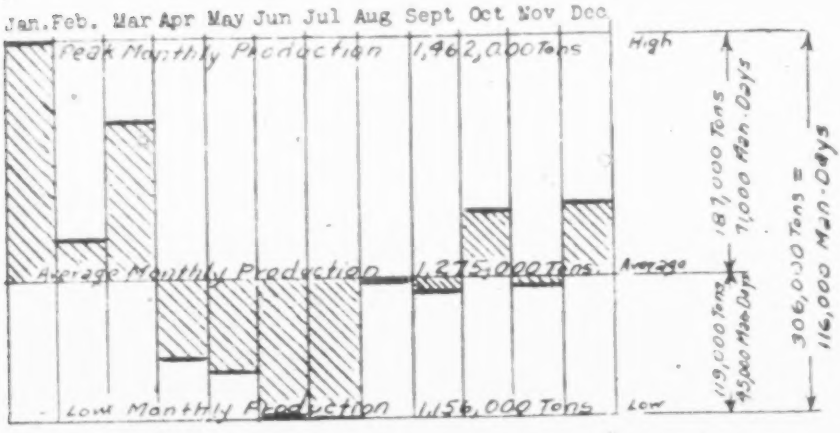
[fol. 198] As stated above, it cannot be assumed that this accurately portrays the full number of exits which might have become eligible to benefits during this period. On the contrary, it may well be that even if the number of exits be increased as not being accurately reflected in the net increase or decrease in employment from year to year, it is probable that a large number of the exits avail themselves of farm work and farm maintenance known to exist generally throughout the coal field. A large number of the miners in Alabama have been recruited from the farm population in the general vicinity of the mines, and make use of these farms as bases during times of low employment. This is particularly true as applied to the seasonal reduction in personnel or working time applicable to the coal industry; but this assertion is not intended to modify the statement first above made that it is obviously impracticable to compile an accurate constructive application of the operation of the Act. The above table does not carry forward any computation for extended allowance of benefits beyond the sixteen weeks period conditionally established by the Act. If it were assumed that the same number assumed to be eligible for fifteen weeks in the above table were in fact eligible for an extended term of ten weeks under the extended [fol. 199] provisions of the Act at the full allowance of $15

per week, there would be an additional amount of benefits withdrawn of $1,839,000, which would reduce the excess in contributions over collections (benefits) during the period 1923-34, to $3,735,866.

The seasonal nature of coal production in Alabama is shown by the average production per month over the period 1921-35 set out on the following graph:

Graph Showing Average Monthly Production Alabama Coal Mines

Fifteen Year Period 1921-1935



During the past decade the number of employees in the Alabama coal industry has been reduced on account of decreasing production from approximately 30,000 to approximately 18,000. This shrinkage in employees would have [fol. 200] been even greater if there was not an attempt on part of employers in the industry in Alabama to spread the work among a larger number of employees than were actually required for economical operation in order to give a greater number at least partial employment. To illustrate by comparison the number of employees being held in the industry in Alabama, the Bureau of Mines for 1934 states that in Alabama the average tons per day per man was 2.62; in West Kentucky, one of Alabama's most vigorous competitors, the average tons per day per man is 5.11. In other words, twice as many men are being used in Alabama to mine an equivalent tonnage as are used in West Kentucky. While this is partially due to the great natural handicaps and disadvantages of production, the spreading

of work among a greater number of employees also contributes.

If this Act becomes and continues operative, there is no doubt that the industry will be forced to even greater mechanization. This will mean that machinery upon which no payroll tax is paid will be substituted for man power. The saving in contribution to the unemployment fund will to a large measure offset the capital investment in mechanization. It is obvious that such a program, which would be forced upon the industry if it is to remain in competition, will shift the burden of responsibility for employment of those now working in the industry upon the State. It is also obvious that such a program will reduce the contribution to the unemployment fund which would be represented by 4% of the wages that those employees would have earned.

[fol. 201] The amount of the contribution annually by the coal industry, exclusive of employee contributions, based on a production of 9,142,000 tons in 1934 (which is to be compared with the peak of 21,000,000 tons in 1926) would amount to $382,860 annually, assuming the application of the aggregate average 3% rate to the industry. This contribution amounts to 4.2¢ per ton. All cost and realization figures covering periods of 1933, 1934 and 1935, for Alabama commercial mines, furnished under NRA and the Guffey Act administrations, showed that Alabama producers operated at a loss varying from 3 to 6 cents per ton, exclusive of financing charges. This loss was due to high cost and inability to get a compensatory realization on account of competition of other forms of fuel and energy. To add another 4.2 cents to the cost simply means that Alabama coal is placed at a still greater disadvantage in its struggle for existence with its practically laborless competitors, natural gas, fuel oil and hydro electricity. Further loss in production would ensue and further unemployment. These competitive industries would contribute very little to an unemployment fund.

The reports furnished under NRA and referred to above showed further that the coal industry was assessed for the cost of state and local government operation, exclusive of [fol. 202] income taxes, a total of 5.92 cents per ton. The tonnage tax has since been reduced 1¢. On the basis of tax payment of 4.92 cents per ton for taxes other than the tax

contemplated in this Act the amount of such tax payments on the 1934 basis of production would be $449,790.

Herbert S. Salmon.

Sworn to and subscribed before me, this 17th day of October, 1936.

L. J. Caran, Notary Public.

[fol. 203] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. M. JACKSON, JR.

Alabama Water Service Company

My name is J. M. Jackson, Jr. I am Vice President and Treasurer of Alabama Water Service Company. I have made investigation of its books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

The Company is engaged in the operation of waterworks and other utilities within the State of Alabama. A schedule of its various operations within the State of Alabama since January 1, 1930, is shown on Exhibit A, attached hereto.

The total payroll of the company in all its operations during each of the years 1930 through August, 1936, and the total contribution which would have been made by the company and its employees had the Alabama Unemployment Compensation Act been in effect as of January 1, 1930, are shown by the following table:

	Total Payroll	Rate of Contribution	Total Contributions
1930	$148,109.38	1.9	$2,814.08
1931	140,111.38	2.8	3,923.12
1932	121,438.49	3.7	4,493.22
1933	119,497.56	3.7	4,421.41
1934	128,805.70	3.7	4,765.81
1935	168,589.84	3.7	6,237.82
1936	145,927.66	3.7	5,399.32
	$972,480.01		$32,054.78

[fol. 204] I have examined the company's records for the period from January 1, 1930, to date with reference to every employee who has for any reason left the service of the company during that time, for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company assuming the Act to have beeen in operation during the period. The total number of employees who have left the service of the company for any reason during this period is sixty nine.

The total number of employees on the payroll of the company during each month of the years involved is shown by the table attached hereto marked Exhibit B. Changes in the number of employees caused by the sale or purchase of plants during the period are explained on Exhibit B.

With reference to each of the sixty nine employees who have left the service of the company during the period (excluding those who left the service by reason of sale of plants, all of whom, so far as is known, continued in the service under the operations by the purchasers), I have ascertained the actual weekly wages paid, the date when service terminated, and have calculated the benefits which would have been payable to such employees under the Act, assuming that such employees would have been entitled to the maximum number of weeks of benefit. In many instances I have been able to ascertain what happened to these employees after leaving the service of this company and in calculating the total benefits which would have been [fol. 205] payable to former employees of this company during this period, I have excluded those former employees whom I know would have been ineligible for benefits by reason of having obtained other employment or for other reason.

Of the sixty nine employees who left the service during this period, 4 died, 25 resigned or voluntarily quit, 3 were transferred to affiliated companies, 36 were discontinued, and 1 left on account of illness. Of the 36 employees who were discontinued, 14 were discharged for cause.

Excluding from benefits each employee whom I ascertained obtained other employment after leaving the company, and excluding those who voluntarily resigned in order to get married and keep house, assuming payment for the maximum number of weeks allowed under the Act (26), the total benefits which would have been payable during the

period would have amounted to $6,481.47. Deducting this from the total contributions which would have been paid into the fund by the company and its employees, as shown above, the unexpended balance of the fund contributed by the company and its employees would have been $25,573.31.

Aside from construction forces, directly employed in new construction, my opinion is that the foregoing reflects a fair average picture of the application of the Act to water and electric utilities within the State of Alabama. The turn-over is extremely small, the reduction of personnel is ordinarily impracticable, even during times of depression. [fol. 206] The period to which the above application is constructively applied represents the period of greatest depression in the history of the utilities and in my opinion represents a period which would show maximum theoretical benefits under the Act, if any benefits are to be regarded as discernible under the facts stated. Comparison of the contributions and maximum theoretical benefits makes plain as to this Company (and utilities generally in the State) that the establishment of individual company plans or reserves in trust would provide much greater benefits and much greater assurance of unemployment relief. There is no competition as between taxable utilities in Alabama, or as between utilities within and without the state, such as might give rise to an advantage from uniform imposition of the levy or tax.

J. M. Jackson, Jr.

Sworn to and subscribed before me, this 17th day of November, 1936.

L. J. Caran, Notary Public.

[fol. 207] EXHIBIT "A" TO AFFIDAVIT

List of Water and Electric Plants Operated During the Period 1-1-30 to 10-31-36 by Alabama Water Service Company

Water Plants

Abbeville
Albertville
Andalusia
Attalla
Bay Minette
Bessemer
Brantley
Bridgeport
Carbon Hill
Coffee Springs (Acq. 3-1-31)
Collinsville
Cordova (Acquired 4-1-31)
Decatur
Dora
Eutaw
Fort Payne
Geneva
Greensboro
Headland
Irondale
Jasper
Leeds
Monroeville
Newton
Oneonta
Ozark
Pinckard
Prichard (Chickasaw)—(Acquired 8-1-36)
Russellville
Samson (Acquired 6-1-35)
Sheffield (Tuscumbia)—(Sold 6-15-36)
Wetumpka
York
Boaz
Brighton
Lipscomb
Parrish
Anniston (Sold 4-17-35)
Girard (Sold 7-20-32)

Electric Plants *

Andalusia
Ariton
Banks
Belleville
Brantley
Brundidge
Clio
Dozier
Elba
Evergreen
Excel
Frisco City
Gantt
Glenwood
Goshen
Kinston
Luverne
Milo
Opp
Red Level
Repton
River Falls
Samson
Troy

* All acquired 6-1-35.

[fol. 208] EXHIBIT "B" TO AFFIDAVIT

Total Number of Employees by Months, Alabama Water Service Co.

	1930	1931	1932	1933	1934	1935	1936
Jan.	106	112	101	96	97	97	130
Feb.	106	107	102	96	97	97	134
Mar.	108	109	101	96	97	97	134
Apr.	106	116	101	96	97	97	134
May	105	110	101	96	97	89(a)	134
June	104	106	101	96	97	130(b)	134
July	103	107	101	96	97	130	131(c)
Aug.	103	102	96(d)	96	97	130	131
Sept.	103	102	96	96	97	130	...
Oct.	135(e)	102	96	96	97	130	...
Nov.	120	102	96	96	97	130	...
Dec.	116	102	96	96	97	130	...

(a) Anniston Sold (8 employees).
(b) Alabama Utilities Co. Purchased (36 employees).
(c) Sheffield Sold (6 employees).
(d) Girard Sold (3 employees).
(e) Increase due to temporary construction work.

[fol. 209] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. W. GIST FOR DEFENDANT—Filed November 18, 1936

Before me, the undersigned authority, personally appeared F. W. Gist, who, being by me first duly sworn, did say upon his oath, that:

I am economic adviser to the Commissioner of Agriculture of the State of Alabama, and have held such position since February 1, 1936. For thirty years prior thereto, I was an Agricultural Statistician of the Department of Agriculture of the United States of America, and from 1915 to 1936 I was stationed in and resided in Alabama and was constantly engaged in the study of and in the recording of the conditions concerning agricultural acreage, production and values in Alabama. This included studies of outside occupations of farmers and their income supplemental to that which they received from farms.

From December 1, 1927, to February 1, 1936, I worked under a co-operative agreement between the Agricultural Department of the United States and of the State of Alabama, and was entitled "State and Federal Agricultural Stati-cian" in Alabama. Under this arrangement, it was my duty to observe, study and record matters relating to trade

and industry as well as those relating to agriculture in Alabama and during those eight years I continuously did so.

All of my work in Alabama has required me to be and [fol. 210] keep informed of the census reports of the United States Government and I am familiar with them. Recently, at the request of the Attorney General of Alabama, I have examined and studied particularly those parts of the reports of the United States Census of 1930, relating to the gainful employment of the population of Alabama and the various classifications of Alabamians engaged therein, their wages, unemployment, and other matters which appeared to me to be relevant to the Alabama Unemployment Compensation Law, its application in Alabama and those parts of the population of Alabama that are affected by said law.

I have also studied such other material as is available to me touching this subject, notably the index numbers reporting employment of wage earners which are published and issued by the United States Department of Labor, and I have applied said index numbers to the figures of the census and have compiled certain attached figures as a result thereof.

In the attached four pages, I have accurately copied from said census reports and from the said Department of Labor reports all the figures and the accompanying statements shown in these pages as being from such reports. From my observation, study and experience in my official capacity, I have made such figures and drawn such conclusions as are stated in these pages as not being copied; to the best of my knowledge, information and belief, my figures and my conclusions, as stated in these pages, are true, and as accurately as is possible for me, I have there truly pictured the conditions of employment in Alabama trade and industry on January 1, 1930, as shown by the United States census and the changes therein since that date and the changes [fol. 211] in prospect therein up to 1941 as such prospects are indicated by the proper statistical use of said index numbers and census figures. Insofar as the prospects can be reasonably arrived at from the materials at hand and from my knowledge and experience as observer, student, compiler and reporter of information concerning such matters, the prospective changes in trade and industry in Alabama up to 1941 are accurately figured in said pages.

(Signed) F. W. Gist.

Subscribed and sworn to before me at Montgomery, this 16th day of November, 1936.

Witness my hand and seal.

(Signed) Florence Ferrell, Notary Public, Montgomery, Alabama. (Impression Seal.)

[fol. 212] EXHIBIT TO AFFIDAVIT

Trend of Employment in Alabama

The United States Bureau of Labor Statistics has published since 1932 index numbers of employment in all groups of endeavor in Alabama. While these index numbers are based on December, 1931, as representing 100, it is possible to change the base to 1929, and calculate, relative to the official figures, a series of index numbers from 1929 down to and including 1935. So calculated, those index numbers are as follows, excepting the year 1930, for the reason that that year was not materially different from 1929:

1929	100.0
1931	66.5
1932	61.9
1933	67.7
1934	71.1
1935	72.1

The United States Census of 1930 reported the number of persons gainfully employed in Alabama, and also the number of salary and wage earners. These are stated as follows:

Gainful Workers, Alabama, 1930

	Persons Engaged	Salary and Wage Earners
Agriculture	492,761	80,105
Forestry and Fishing	5,476	4,417
Mining	35,781	33,735
Manufacturing	185,681	130,034
Transportation	61,157	50,148
Trade	73,568	64,646
Public Service	12,914	12,914
Professional	39,657	35,968
Domestic	102,345	97,751
Clerical	31,321	31,321
Construction	10,075	9,956

The difference between the two columns of figures represents what may be called owners of business gainfully occupied but not receiving salaries or wages and therefore not subject to the Unemployment Insurance Act. In the case of agriculture the difference also includes numbers of farm families working without stipulated pay.

Certain types of workers are exempted from the operation of the Unemployment Insurance Act. These are enumerated in Section 2, Paragraph C. It is possible to determine these exemptions from the United States Census of Occupations except for those mentioned in Paragraph 4, under Paragraph G, designated as "Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother". It is believed that such of these persons as might otherwise be subject to the Act are few in number and would not affect the total [fol. 213] sufficiently to materially change the proportion of those exempt to those subject to the Act. Those persons thus exempt, the number of whom may be definitely determined, are given below:

Agriculture	80,103
Manufacturing	317
Transportation	19,479
Trade	4,145
Public Service	12,914
Professional	22,789
Domestic	42,865
Total	182,612

Subtracting this total number specifically exempted from the total number of salary and wage earners, there are left 366,363 persons who would have been subject to the Act in 1930.

The Act further exempts all establishments employing less than eight persons. The proportionate number thus exempted will vary in the different groups but a reasonable average deduction for such exemption would be about 25%. Therefore, it appears that the number of persons employed on salary and wages in 1930 who would have been actually subject to the provisions of the Unemployment Insurance Act, was in round numbers, 276,000.

Using the index numbers on employment shown above, it is possible to calculate the number of wage earners which would have been so subject from 1931 to 1935, inclusive. These are shown as follows:

1931	184,000
1932	171,000
1933	187,000
1934	196,000
1935	199,000

From the reports of the United States Bureau of Labor Statistics we give below the average weekly wage and the average annual wage paid per person in Alabama in all groups of industrial employment for the years indicated:

Year	Average Weekly Wage	Average Annual Wage
1929	$18.27	$980.00
1931	16.53	808.00
1932	11.35	590.00
1933	11.95	621.00
1934	13.24	725.00
1935	14.76	767.00

The total wages paid, therefore, which would have been subject to the assessment of the premium for Unemployment Insurance would have been as follows:

[fol. 214]

1931	$148,672,000
1932	100,890,000
1933	118,027,000
1934	142,000,000
1935	152,633,000

A somewhat uncertain and yet a reasonable projection of persons employed can be applied to succeeding years, which may be stated as follows:

Year	Persons Employed	Annual Wage
1936	205,000	$795
1937	213,000	829
1938	221,000	855
1939	226,000	881
1940	234,000	907

The number of persons employed as given above is a continuation of the relative increase which occurred from 1932

to 1935. The weekly wage given, however, is an arbitrary addition of fifty cents per week to the average wage to 1935. Both these columns of figures are, of course, problematic, but, since they are used for the purpose of illustration as to the probable collections and probable benefits under the Unemployment Insurance Act, they may be accepted as reasonable. If they be so accepted, we can then set up probable figures as follows:

Year	Annual Wages	Premium	Total Collected
1936	$162,675,000	1.9	$3,689,000
1937	176,567,000	2.7	4,944,000
1938	188,956,000	3.7	6,991,000
1939	199,106,000	3.7	7,367,000
1940	212,238,000	3.7	7,853,000

If in 1941 there should be a recurrence of unemployment somewhat equivalent to the period we have just come through, and employment in the industrial groups under consideration should drop to, say 170,000, we would find Alabama with something like 64,000 unemployed persons who would be entitled to the benefits of this Act. Since under the Alabama Law those entitled to benefits would receive 50% of their former wage, and assuming that the 1940 wage as shown above would be taken, each person would be entitled to $8.63 per week for sixteen weeks, or $138.00 for the period. Thus it would require $8,832,000 out of the accumulated funds to pay these benefits. The total collections shown above would, therefore, maintain the purposes of the Act for three and a half years without giving consideration to any further collections during that period.

It is interesting to note from the trend indicated by the index numbers given above that an average of 36.33% of the persons employed in 1929 were unemployed during the period 1931 to 1935, inclusive. This indicates the severity of the depression through which we have passed. It indicates, as well, the need for insurance against unemployment, and also indicates the cost involved in such insurance [fol. 215] in a period of unemployment such as has been experienced during the years under consideration.

The trend of employment in industry as compared with the total number of persons gainfully occupied in Alabama from 1900 to 1935 may be stated as follows, the figures

being taken from the reports of the United States Census for the year indicated:

	Total Employed	Employed in Industry	Per Cent.
1900	763,188	149,238	19.5
1910	997,524	213,252	21.4
1920	908,216	278,624	30.7
1930	1,026,296	345,295	33.6
1935 (Est.)	1,029,000	230,699	24.3

The persons employed in industry shown above are those reported at each census as engaged in Mining, Manufacturing, Transportation, and Trade, and the total employed as given above includes all persons gainfully occupied. It will be noticed that the percentage of the total employed which was employed in industry showed a steady upward trend to 1930, but that from that year to 1935 the proportion employed in industry showed a considerable falling off in proportion to the total employed. The figures for 1935 are estimated by using the index numbers first set out in this discussion. The falling off in industrial employment disclosed by the figures for 1935 is believed to be due to the proportionate unemployment in industry, which is shown throughout this discussion, and that a material proportion of such falling off represents persons who have drifted back from urban employment to the rural homes from whence they came. This belief is confirmed by the fact that the United States Census of Agriculture for 1935 shows a considerable increase in the number of persons engaged in agriculture but without specific wages therefor.

[fol. 216] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. L. KAUFMAN—FOR DEFENDANTS—Filed November 18, 1936

STATE OF ALABAMA,
Montgomery County:

Before me the undersigned Notary Public and for said county and state personally appeared J. L. Kaufman, who

is known to me and who being by me first duly sworn, deposes and says:

(1) I was duly appointed, qualified and am acting as Chairman of the Alabama Unemployment Compensation Commission, hereinafter called the Commission, created under the provisions of the Alabama Unemployment Compensation Act (General Acts of Alabama, 1935, page — et seq. as amended); hereinafter referred to as the Act, that under my general supervision and control as Chairman, to the extent provided in said act, the Commission has administered, and is now administering, the provisions of such act in the manner required by the act and by section 10 thereof,

(2) The Commission has not engaged the services of any person or employee other than those authorized by the act and section 10 (d) thereof nor has the Commission engaged in any publication or propagandizing activities other than those authorized by the act and section 10 (c) thereof and reasonably necessary to the carrying out of such provisions; nor has the Commission expended any funds for any publication purpose other than for those prescribed by section 10 (c).

(3) The Commission has adopted rules and regulations requiring employers subject to the act to file with it such [fol. 217] reports as are reasonably necessary to the efficient enforcement of the provisions of the act, and to keep such reasonable records with reference to the number and status of their employees as will enable the Commission correctly to determine the amounts of wages paid to their employees who are subject to the act and the proper amount of contributions due from such employees and the employer under the act. The general rules and regulations so adopted are not discriminatory or oppressive as to any employer, but are of a general nature applicable alike to all employers subject to the act and are reasonably necessary to the efficient and effective administration of the act.

(4) The act makes no provision for the imposition by the Commission of any summary or administrative penalty, and such penalties as are provided by the act, that is to say, interest at the rate of 1% per month on delinquent payments due as provided by section 14, and the criminal penalties for intentional violations or fraud provided by section 15 of the act, can only be enforced or imposed by an orderly

proceeding in a Court of law. I am informed and believe, and upon such information and belief state, that in any such action at law to enforce the payment of contributions due, with interest, or to impose the criminal penalties provided, any person could, and would have the opportunity to, assert every claim, right or immunity which he might have or claim under the Constitutions and laws of the United States and of the State of Alabama.

(5) The Commission has not threatened any person or employer subject to the terms of the act that in the absence of compliance with the act and payment of the contributions demanded, that it will not issue certificates with respect to credits under Title IX of the Federal Social Security Act. The Commission has made no such threats to the Southern Coal and Coke Company or the Gulf States Paper Company. The Commission has properly demanded [fols. 218-219] of the Southern Coal and Coke Company and the Gulf States Paper Company, as well as all other employees subject to the act, that they pay the proper amounts of contribution due from them under the terms of the act. The Commission has no power to compel the grant or denial of any credit or off-set against the tax levied under the terms of Title IX of the Federal Social Security Act, and unless the contributions required to be paid under the Alabama Act are in fact paid by the person claiming the right to such off-set or credit, the Commission is without authority to issue, and cannot issue, to any such person a receipt or certificate such as might entitle such person to any credit under Title IX of the Federal Social Security Act.

(6) That hereto attached as Exhibit "A", is a true and correct copy of the "Employers Contribution Report Covering Employer and Employee Contributions", which is the general form required by the Commission, filed with the Commission by the Southern Coal and Coke Company, showing the number of its employees and the hours worked, by the week, for the period from May 1, 1936 to August 31, 1936, with dates inclusive.

(7) It appears from this report that for the two-week period ending May 15, 1936 the Southern Coal and Coke Company employed 324 persons, subject to the Act, for a total of 22,917 hours; that for the two-week period ending

July 15, 1936 the number of employees declined to 306, but that the total hours of work declined to 15,924, showing an apparent total unemployment, during the latter period, of 18 employees, and partial unemployment of the remaining 306 of approximately fifty per cent or approximately thirty-three and one-third per cent according as the percentage is calculated upon the minimum (for the two-week period ending July 15) or maximum (for the two-week period ending May 15) number of hours worked.

• • • • • • •

[fol. 220] (11) Except as restrained therefrom by the Courts the Commission will continue to administer the Alabama Unemployment Compensation Act in accordance with its provisions.

J. L. Kaufman.

Sworn to and subscribed before me this the 17th day of November 1936.

Florence Ferrell, Notary Public, Montgomery County, Alabama. (Seal.)

(Here follow two photos, side folios 221 and 221½)

EXHIBIT - "A" - Kauffman 12-00039

SOUTHERN COAL & COKE CO
BOOTHTON ALA

Form C.R. No. 2
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For the Period ~~January 1~~ May 1 through ~~April 30~~ August 31 1936, Due not later than ~~September 28~~ October 5 1936.

Location of establishment covered by this report BOOTHTON, ALABAMA
(if address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
		Total					
Half Month	1	May 15	324	22,917	$14,590.67		$14,590.67
	2	May 31	317	22,194	14,374.61		14,374.61
	3	June 15	318	20,264	13,141.81		13,141.81
	4	June 30	312	19,831	12,910.96		12,910.96
	5	July 15	308	15,924	11,136.15		11,136.15
	6	July 31	313	20,189	13,561.99		13,561.99
	7	August 15	313	18,276	11,998.71		11,998.71
	8	August 31	317	20,739	13,310.21		13,310.21
		Total			$105,025.11		$105,025.11
Month	1						
	2						
	3						
	4						
		Total					
Deferred payments if any							
		Grand Total					$105,025.11

Employer's Contribution (9/10 of 1 per cent of grand total Column 7) - - - - - - - - - - - - $ 947.25
Employee's Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) - - - - - - - - - - - - 1,051.23
Total Contributions - $ 1,998.48
1 per cent per month interest if delinquent from due date as set out above - - - - - - - - - - - -
Corrections (if any) for previous over-payment -
Corrections (if any) for previous under-payment -
Total remittance enclosed - $ 1,998.48

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Ala.)

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer SOUTHERN COAL & COKE COMPANY

293

By G. F. Peter

Date signed _____ Official Title PRESIDENT

On the first line of the signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

(See reverse side for Instructions)

FEDERAL COURT
DEPOSITED IN ESCROW

221

280A

Reverse side
Form C.R. No. 2
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly pay rolls (for all or some of your employees) use lines 1 to 18 for the 18 weeks from May 1 through August 29, 1936. (The week of April 26 to May 2 should be split to begin from May 1. The week of August 30 to September 5 should be included on the September report.) (The weeks need not be split between the months May-June, June-July, and July-August.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months May through August, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, May through August, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as annual bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

22I½

[fol. 222] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PEYTON BIBB—Filed November 18, 1936

STATE OF ALABAMA,
Montgomery County:

Publications of the Alabama Mining Institute.

Before me Florence Ferrell, a Notary Public in and for the State of Alabama, Montgomery County, personally appeared Peyton Bibb, who is known to me and who being by me first duly sworn, deposes and says:

I am over the age of twenty-one years and a resident of Birmingham, Alabama.

The Alabama Mining Institute located at Birmingham, Alabama is an association composed of, and financially supported by, coal mining operators of Alabama, for the purpose of fostering and advancing the interests of the coal mining industry in Alabama. Approximately eighty-five percent (85%) of the coal mining operators in Alabama, individual and corporate (and virtually all operators of mines with rail connections) are members of the Alabama Mining Institute, and this group produces approximately ninety-five percent (95%) of the coal mined and distributed in and from the State of Alabama. The offices and Board of Governors of the Alabama Mining Institute are either individual coal operators or executives of coal companies.

[fol. 223] The Southern Coal and Coke Company, located in Shelby County, Alabama, (the plaintiff in case No. 691, before this court) is a member of the Alabama Mining Institute, and Mr. George F. Peter, the President of the Southern Coal and Coke Company, is a member of the Board of Governors of the Alabama Mining Institute. The Alabama Fuel and Iron Company, located in St. Clair County, Alabama, is a member of the Institute.

The members of the Alabama Mining Institute file with it periodically reports of their operations.

During the current year, this Alabama Mining Institute has officially published and circulated generally in Alabama by mail and otherwise, a series of bulletins on the history of coal mining in Alabama. That attached hereto as Exhibit "A" and made a part hereof, is Bulletin Number Eleven, of this series entitled "Coal Mining in Alabama—

Utilization and Distribution of Coal," published and circulated in October, 1936.

That hereto attached as Exhibit "B" and made a part hereof is Bulletin Number Twelve of this series entitled "Coal Mining in Alabama—Coal Mining Employees," published and circulated in October, 1936.

I am informed by the officials of the Alabama Mining [fol. 224] Institute, and believe, and upon such information and belief, state that the facts and statistical data shown in these two Bulletins, except as therein otherwise indicated were correctly assembled and compiled from the reports of its own members and from data furnished it by carriers, coal sales agencies and other persons in Alabama; that the figures therein shown as having been taken from the records of the United States Government and the United States Bureau of Mines were correctly abstracted from such records.

Peyton Bibb.

Sworn to and subscribed before me this 17th day of Nov. 1936.

Florence Ferrell, Notary Public, Montgomery County Alabama. (Seal.)

[File endorsement omitted.]

EXHIBIT - "A" to AFFIDAVIT

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Coal Mining in Alabama

UTILIZATION AND DISTRIBUTION OF COAL

Alabama coal is produced on 31 seams of various grades, each having different characteristics, and adaptable to many uses.[1] It is prepared in various sizes and grades to meet customer requirements, the principal uses being for open grates, stoves, stationery boilers including steamships, railroad locomotives, blacksmithing, all types of heating plants, whether fired by hand, mechanical stokers or pulverizers, also for making gas and coke.[2]

The demand for Alabama coal, which compares favorably in quality with that mined in other competing states, increased steadily up to 1926 when the maximum production of over twenty-one and one-half million tons was reached. Since that time the production has decreased at an alarming rate, being reduced to around nine million tons

(1) Only about 10% of the coal produced in the State is "Lump" or other sizes known as "Domestic" Coal.

(2) The coal produced from most of the seams in this State are not adaptable or susceptible of use in making coke, either under the "High" or "Low" Temperature Carbonization processes; therefore, the product from such seams must be disposed of in its raw state.

during the years 1933, 1934 and 1935, or the lowest since 1900.

The table below shows a comparison of the consumption of Alaban a coal for the years 1926 (peak year) and 1935:

	1926 Tons	1935 Tons	Decrease Tons	Decrease Percent
Used for Domestic Purposes	2,394,791	989,273	1,405,518	58.69
Used for Railroad Fuel	7,467,590	2,926,741	4,540,849	60.80
Used for Steamship Fuel	689,443	230,255	459,188	66.60
Used in Steam Power Plants	4,383,357	1,707,213	2,676,144	61.05
Used in Making Coke	6,573,631	2,846,518	3,727,113	56.70
Total	21,508,812	8,700,000	12,808,812	59.55

During the year 1926 about one-third of the coal produced was shipped outside the State, but in 1935 less than fourteen percent was used outside of Alabama.

CONSUMPTION OF ALABAMA COAL BY STATES

	1926 Tons	1935 Tons	Decrease Tons	Decrease Percent
Alabama	14,410,904	7,508,100	6,902,804	47.90
Georgia	2,344,461	374,100	1,970,361	84.04
Mississippi	2,043,337	295,800	1,747,537	85.52
Louisiana	1,720,705	200,100	1,520,605	88.37
Florida	387,159	182,700	204,459	52.81
Tennessee	322,632	69,600	253,032	78.42
Other States	279,614	69,600	210,014	75.10
Total	21,508,812	8,700,000	12,808,812	59.55

The heavy losses above noted are due mainly to the inroads or displacement of Alabama mined coal in its natural trade territory by laborless fuels and power, viz: natural gas, oil and hydo-electricity, together with coal produced at lower costs in other states.

This decline in consumption was the principal or proximate contributing cause (from 1926 to 1935) of closing

down one hundred and nineteen (119) coal mines (with rail connections) in Alabama and incidentally an enormous loss of capital invested therein; as well as the disemployment of approximately nine thousand mine employes.[3]

It represents an annual loss in cash income to the State of Alabama of over thirty million dollars ($30,000,000.00), of which over twenty-one million dollars ($21,000,000.00), or the equivalent of over five million "man days" work, was lost to coal mine employes. Also many million dollars were lost to those furnishing supplies, including farm products, to the mines and mine employes, to say nothing of the large amount in taxes lost to the State and counties.[4]

In addition to the above the public-carrier railroads serving the coal fields of Alabama have lost nearly ten million dollars ($10,000,000.00)[5] per year in freight revenue of which over four and a quarter million dollars ($4,250,000.00) would have gone to the railroad employes as wages. Needless to say, this also proportionately reduces the the market for the products of Alabama.

Not only the wage earners directly involved but every citizen of the State is consequently affected adversely by this decrease in income and curtailment in purchasing power above mentioned.

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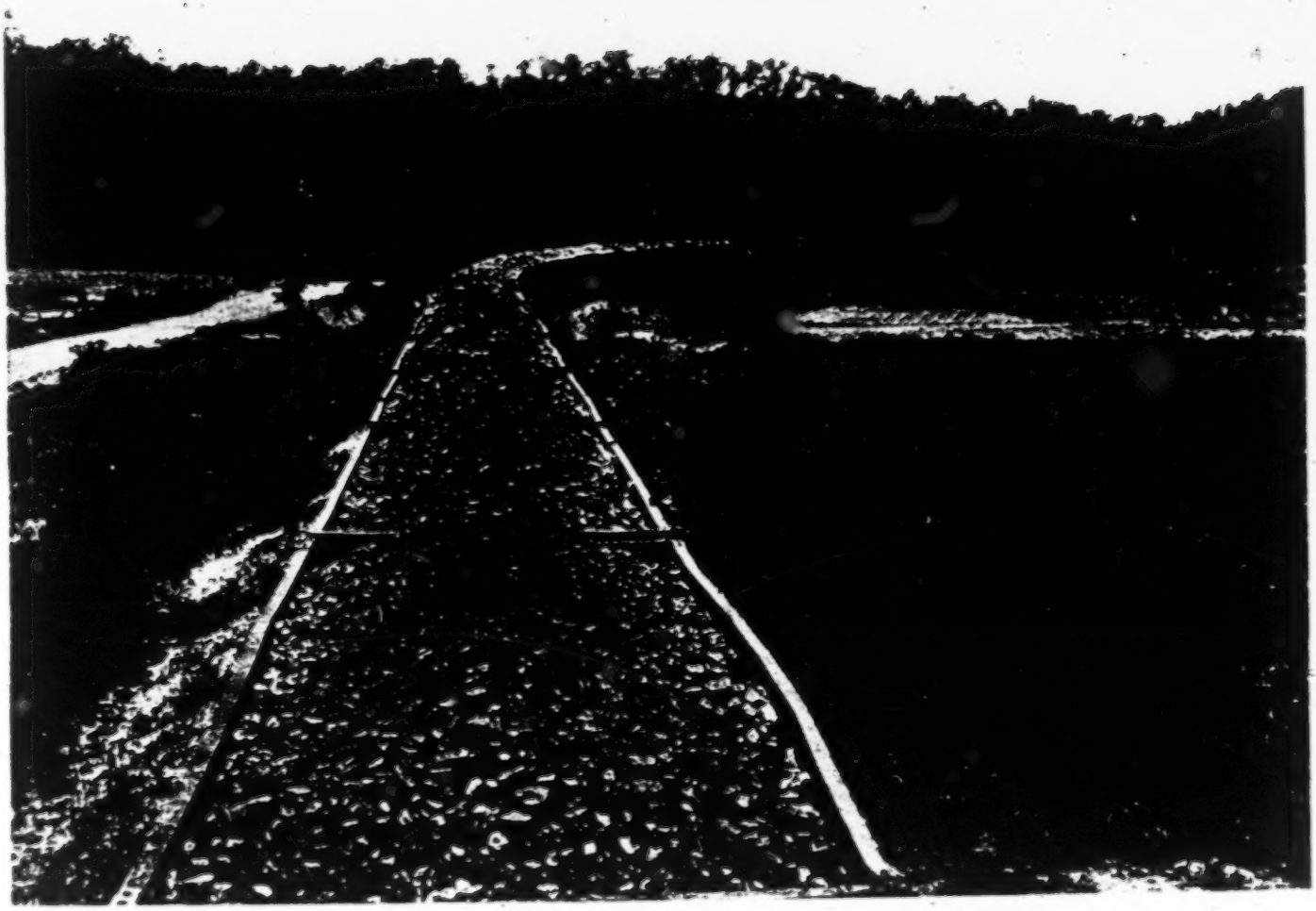
(3) Also, the number of days work available to those now employed has decreased about 30% since 1926.

(4) Approximate loss per year (1926-1935):

Mine labor and salaries	$21,471,412.00
Mine supplies and equipment	7,211,361.00
Insurance premiums, royalties and miscellaneous	1,530,955.00
Taxes	630,193.00
Total	$30,876,921.00

(5) This does not include the revenue lost to privately owned railroads in the Birmingham district which handle a large tonnage of coal and coke and whose revenue and employment have also been materially reduced.



A Trainload of Alabama Coal En Route to Market

EXHIBIT - "B" to AFFIDAVIT

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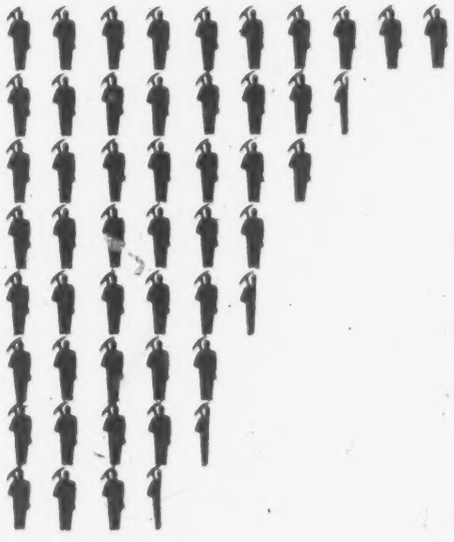
Coal Mining in Alabama

COAL MINE EMPLOYES

Due to the adverse geological conditions in the coal fields of Alabama, referred to in our previous issues, the production of coal per man is considerably less than elsewhere as shown by comparison below and table on page 3.

NUMBER OF MEN REQUIRED TO PRODUCE 26 TONS OF COAL PER DAY



ALABAMA
SOUTHERN APPALACHIAN
VIRGINIA
HARLAN (KY)
WEST VIRGINIA
WEST KENTUCKY
ILLINOIS
INDIANA

Number Twelve

In addition to the "miners", who break down and load the coal, a large number of "day men"[1] (non-producers) are required to operate and maintain the mine (including the tipple, preparation plant, etc., outside.)

The "day men" include many classes of skilled or semi-skilled labor, such as, engineers, motormen, electricians, bonders, wiremen, trackmen, rockmen, fanmen, weighmen, gas men, carpenters, machinists, blacksmiths, inspectors, supervisors, and others too numerous to mention.[2]

Furthermore, as most of the mines in Alabama are "slope" mines or "shaft" mines without natural drainage, they must be dewatered or freed of the accumulation of water which comes from underground springs and streams. Also, large quantities of surface water seep into the mines through crevices in the broken geological strata or cracks caused by subsidence of the overburden of the worked-out area and extending from the roof of the mine upward to the surface. This requires the purchase, installation and maintenance of large pumps and miles of pipe, at great expense, which are serviced by engineers, electricians, pipemen, pumpers, and their assistants, as well as heavy expense for power to pump millions of gallons of water daily upgrade several hundred feet.[3]

These various classes of labor are required in every coal mine, wherever located; however, a greater proportion of "day men" are needed in Alabama mines than in the mines of other states. This is due to the necessity of removing large quantities of rock (called "dead work") above or below the thin coal seams,[4] to provide sufficient head room for the mine workers and permit passage of mules, electric locomotive and mine cars. Also, the steep and variable grades

---

(1) The "Day men" do all the work inside and outside the mine not performed by the "Miner." It requires about one "Day man" for each "Miner."

(2) Also many thousands of dollars must be spent for labor (as well as supplies) in opening and developing the mine before any coal is available for market.

(3) In some mines as much as 20 tons of water must be pumped out of the mine for each ton of coal produced.

(4) Some seams now being worked in Alabama are only 20 inches thick.

underground caused by the necessity of following the pitching seams, which are broken up by faults, calls for more haulage men and timber men than are required in mines with thick, flat seams. Likewise, because of the much greater percentage of coal washed in Alabama. the number of men required to hand-pick the coal and operate the coal washing plants is far in excess of the number required in other states where only a very small proportion of the coal requires washing (over 73% of all Alabama coal is washed).

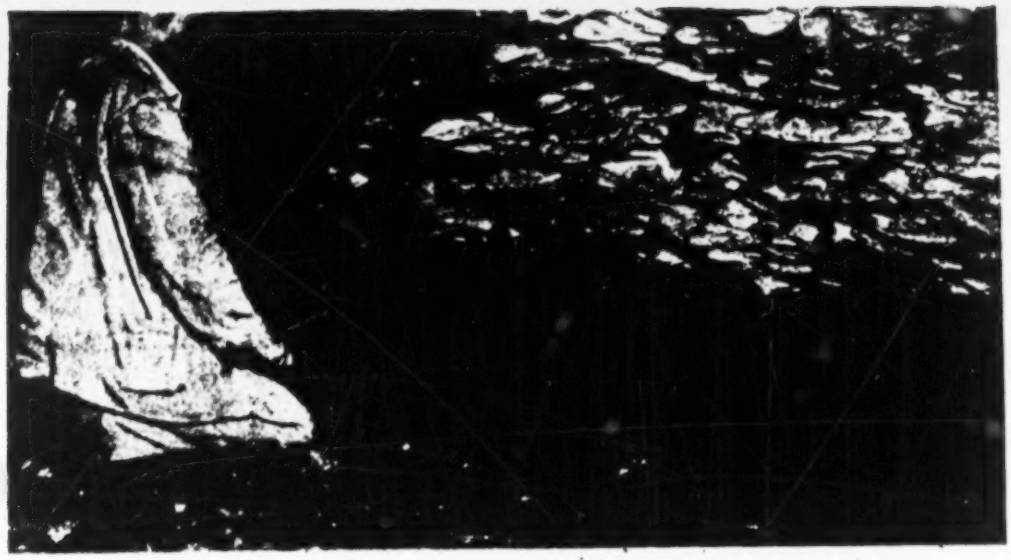
Because of these conditions and the relatively small amount of coal that can be broken down and loaded by the miner in Alabama, the production per man per day is much lower than it is in other coal fields. The table below is from the records of the United States Bureau of Mines for 1935.

	Average Tons Per Man Per Day[5]
Alabama	2.62
Southern Appalachian (part Tenn. and Ky.)	3.38
Virginia	3.84
Harlan Field (Ky.)	4.34
West Virginia	4.73
West Kentucky	5.11
Illinois	5.62
Indiana	7.75

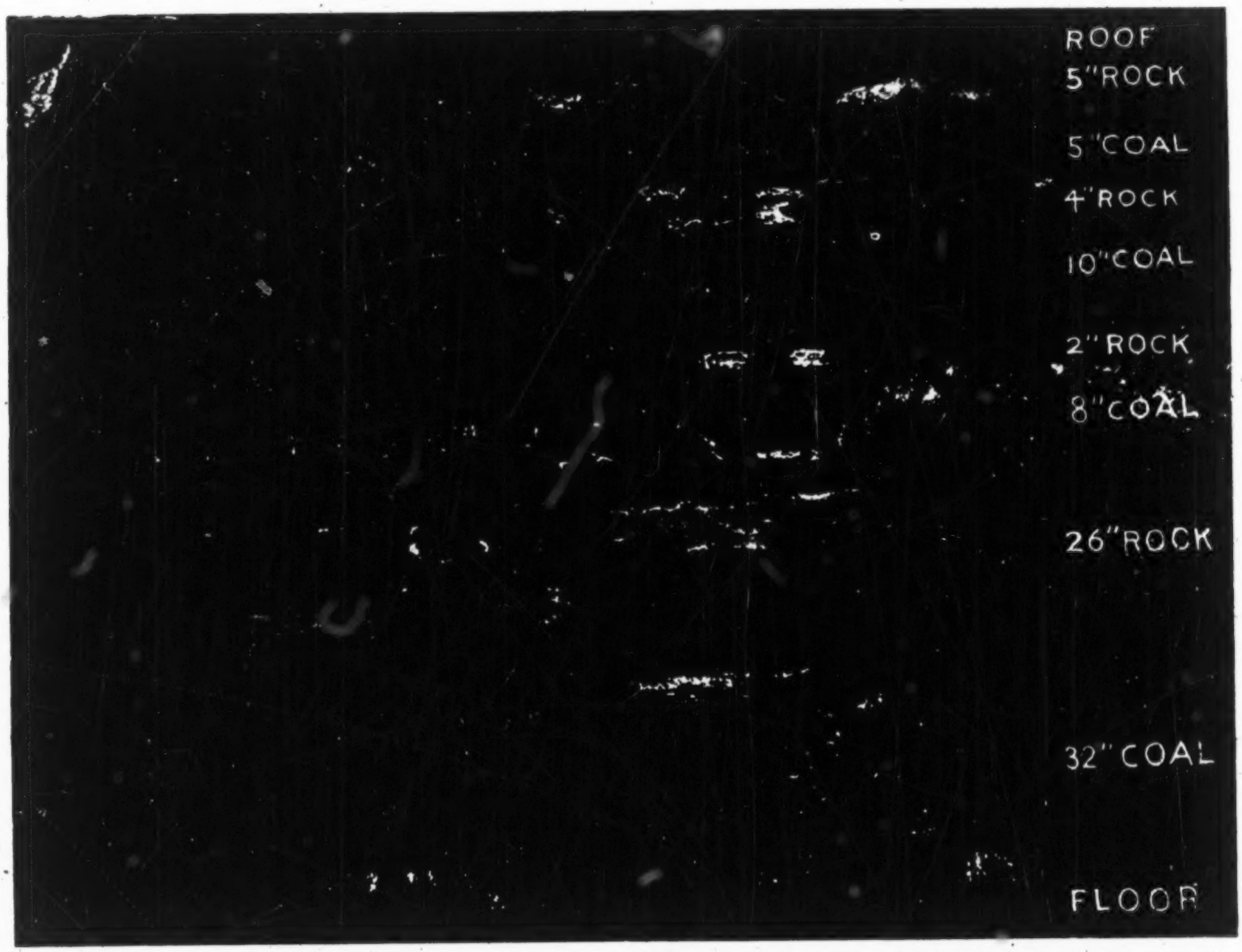
In other words, it requires 10 men to produce 26 tons of coal per day (7 hours) in Alabama, whereas, less than 3½ men can produce that quantity in the same time in Indiana. (See illustration on front page.)

These conditions naturally increase the cost of production and reports of the Federal Government for 1934 show Alabama coal costs 13.34% more to produce than coal mined in the Southern Appalachian District—18.16% more than in Virginia—18.68% more than the Harlan Field (Ky.)—36.72% more than West Virginia—49.39% more than Illinois—and 52.61% more than Indiana. (West Kentucky figures are not available.)

(5) "Tons per man per day" represents the total coal tonnage (per day) divided by the total number of mine employes.



Mining on 20-inch Clean Seam in Alabama, Two Miles Underground



Working Face in Room of an Alabama Mine (on "Big Seam") Showing Partings of Rock Between the Layers of Coal. There Are Also Numerous Thin Partings of Rock Not Visable or Indicated in the Picture. These Impurities Must be Removed by Hand-picking and Mechanical Washing Before the Coal is Shipped to Market.

228½

[fol. 229] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

[Title omitted]

Findings of Fact and Conclusions of Law—Filed December 15, 1936

STATEMENT

The Federal Social Security Act was approved August 14, 1935. The Alabama Unemployment Compensation Law was approved September 14, 1935, and amended by three Acts approved April 21, 1936. The Alabama Act follows the suggestions or requirements of the Social Security Act and has been approved by the Federal Social Security Board. The Alabama Act creates the Alabama Unemployment Compensation Commission to administer it, and its enforcement in court is required of the Attorney General of Alabama. Under the Alabama Act reports by employers have been required and payments, being payroll percentages in part deducted from employees' pay and in part paid by the employers, are already due and demanded. Failures to comply are punishable by cumulative penalties and by criminal prosecutions, all requiring court action. Two bills have been filed in this court seeking preliminary and permanent injunctions and other relief, against the members of the Alabama Unemployment Compensation Commission and the Attorney General of Alabama, one by the Southern Coal & Coke Company and one by the Gulf States Paper Company, and have been heard together by a court of three judges on the same evidence, and on their [fol. 230] respective pleadings. The Alabama Act is assailed as unconstitutional both under the equal protection and due process clauses of the Fourteenth Amendment, and under the Alabama Constitution, and the Social Security Act which is contended to be necessarily involved in the Alabama Act is assailed as being not within the powers of Congress and in violation of the due process clause of the Fifth Amendment. Other constitutional difficulties are alleged. Both preliminary and permanent injunctions are now for decision.

Findings of Fact

1. There is in each case diversity of citizenship and more than three thousand dollars involved exclusive of interest and costs.

2. If payment be made of the sums demanded their recovery, if the Act be unconstitutional, would be uncertain and difficult, no clear and adequate remedy at law being apparent, and there would arise a multiplicity of suits with employees whose pay was withheld. If payment be refused so as to test the validity of the Act by a forced collection, penalties and criminal liabilities would be incurred if the Act be valid, both numerous and serious, so that the remedy by resistance at law is not safe and adequate. The remedy here sought in equity is more certain and effectual.

3. The Act seeks to alleviate the public evils and private hardships of unemployment. The evidence aided by common knowledge shows that Alabama was originally and still is predominantly an agricultural State, and that in agriculture unemployment is not an acute problem. The land may always be tilled and will yield a living though business conditions be adverse, and even the old and the ill are generally worth their keep on a farm. The development of capitalistic industry has created a great class who work for others and have no capital but only their capacity to work. [fol. 231] On the average they have nothing and make no adequate provision for illness, old age or unemployment. Illness and old age though fairly certain to come are spread out in time and space. Unemployment becomes acute and cumulative in periods of business depression, the unemployed especially in industrial communities are unable to help each other, or to help themselves, and suffer great distress, even starvation. Sickness is apt to occur, criminality is encouraged, and riot and revolution risked. The whole public is vitally interested in ameliorating the distress of such unemployment.

4. In the past no special legislative remedy for unemployment has been attempted. Poverty, however caused or by whomever suffered, has had the traditional relief in Alabama by poor laws, through the counties and their general taxation. This relief is limited and proved wholly inadequate during the great depression of the past few years.

5. The remedy proposed in the Act of Sept. 14, 1935, is, as interpreted in behalf of the State of Alabama in the answers, not a relief for indigence, but a scheme for compulsory insurance against unemployment, in which the beneficiary draws his benefits not because he is poor but because he has paid for them. The relief is not complete, for there is a waiting period during which nothing can be drawn, and the relief when it begins continues in general for only sixteen weeks, and covers but half the wage loss in those weeks. But it gives a support for a time within which new employment may be found or the old resumed, and keeps some money in circulation to uphold general business, relieving the cumulative collapse that so often attends either local or general business depressions. The means adopted by the Legislature is appropriate to the end in view.

6. At the passage of the Act there were no accurate and full data available on which actuarial estimates could be made of the fund and the contributions necessary to sustain [fol. 232] the proposed benefits. Unemployment, as it depends on business cycles, would seem hardly predictable. But the Legislature had the federal census of 1930, the investigations and tabulations of the Federal Bureau of Labor Statistics, and the data and suggestions assembled in connection with the Federal Social Security Act, besides the fund of general knowledge and the judgment which all Legislatures are supposed to possess. There were no special hearings touching the proposed law, but it had the usual constitutional delays in its passage. It was reconsidered for amendment in April, 1936. The Act is on its face somewhat tentative, in that the right to amend and repeal is expressly reserved, a delay of two years provided before benefits can be paid, and the Commission established is to get information and acquire experience which is to be made the basis of classification and adjustment of rates after 1940.

7. The exceptions from the Act have discernible reasons which prevent them from being arbitrary. The peculiar status of agriculture and its slight need for the remedy have been above alluded to. Domestic service in homes is similar, such servants seldom being discharged in great numbers at once or left to suffer. The same is true of the employers of the near relatives mentioned in the Act. Service on ships in navigable waters, service on interstate rail-

way carriers, and for the United States and its instrumentalities are peculiarly subject to federal law, and impositions on employer and employee would run into peculiar difficulties. So also impositions on charitable institutions and their employees would burden the charities which are semi-public at best. The State and its instrumentalities are excluded for like reasons. Why solicitors and agents of insurance companies are omitted is not apparent.

[fol. 233] 8. The main classification is between employers of eight persons or more and those of less than eight. Some employers and employees are now by litigations opposing the law on the ground that it is arbitrary to include in the burdens and benefits of the law employers and their employees where there are eight employed and to exclude where there are only seven or six. No reason for the difference this made appears. It is suggested that very small payrolls would not yield much contribution nor pay to bother with. But from the employee standpoint the need of protection is not less because he works with fewer employees, and from the public standpoint the unemployment of a number of persons carries the same menace whether they formerly worked for large or small concerns. It is evident that six or seven high salaried employees would cause a much greater payroll than a dozen or fifty day-laborers. No reason is found for the inclusion alone of employers of eight or more persons; nor why less than all should be included. If a store having seven employees is competing with one having eight, it is manifest that the former can undersell the latter, and the latter must discharge one employee, or go broke and discharge all eight, equalizing wage reductions being forbidden.

9. The evidence shows that petitioners here, and many other employers of hundreds of workers each, have a record of few or no discharges except for cause for a number of years past even during the recent depression, and have no prospect of unemployment in the future; so that if the Act had been in force in the past they would have paid in many thousands of dollars each year, but their employees would have gotten almost nothing, and that the same thing will likely be true in the future. On the other hand many employments are habitually seasonal and fluctuating, unemployment being large and regularly recurrent, so that bene-

fits in excess of contributions will be drawn and at the expense of employers and employees of the more stable em- [fol. 234] ployments. The pooling of funds for all employments under the Act will thus result almost certainly in making certain classes of business carry the burden of benefits to other classes. The general and indirect benefit to all business resulting from the disbursement of the benefits is not a practical off-set to this inequality. It is however also true that in a period of years every employer may meet disaster and have to curtail or cease operations, so that there is always the possibility of his employees drawing benefits above those indicated by his previous record.

10. Contributions required of employees are but premiums for an insurance protection. Contributions required of employers can hardly be called such. Employers have no direct benefit from the insurance fund. Such contentment as it may give employees, or such general improvement to business as its disbursement may cause are too indirect and vague to be measured. The direct effect of the law is to require the employer to pay about two-thirds of the premium necessary to protect the employee. It is equal to a compulsory increase by that much of the wages paid to be devoted to insurance for the employee's benefit. In the long run it might be absorbed in a general reduction of wages by force of business competition, next adverted to.

11. The business of both petitioners is interstate and in competition with others. In the coal mining business of one petitioner there is a great labor handicap in that because of geological conditions in Alabama a miner there cannot produce as much coal as in a mine say in Indiana. The burden of the Act might force the employer to reduce labor costs or go out of business. Nearly all business in the United States proceeds in competition with business in other States. Any special or other legislation burdensome [fol. 235] to business which may be adopted in one State will put the business of that State at a disadvantage in the competition. The State cannot protect itself by a tariff or otherwise curb the competitors in the other States by reason of the federal Constitution. Hence the necessity of coordination through the federal government, sought to be had in this instance by the Social Security Act.

12. The provisions of the Social Security Act did not intimidate the members of the Alabama Legislature into passing the Alabama Act, but did induce its passage by making it appear more advantageous to the State than not to pass it. The Legislature provided that if the federal Act should be held unconstitutional by the Supreme Court of the United States the Alabama Act shall become inoperative. The State of Alabama does not here complain that her freedom of legislation has been interfered with.

Conclusion of Law

1. The Court has jurisdiction, both federal and equitable.

2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another, is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins vs. Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motorcarriage, [fol. 236] have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens (see Mountain Timber Co. vs. Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers

having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or employees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate vs. Harvey, 296 U. S. 404, 423, 425.

5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson vs. Collins, 218 Ala. 54.

6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher vs. Pock, 6 Cranch, 87, 130; 131; United States vs. Des Moines R. R. Co., 142 U. S. 545; Anglo vs. Chicago R. R. Co. 151 U. S. 17, Cooley Const. Lims. (8 Ed.), p. 379, 380.

7. The Alabama Act being disposed of because the Court finds it to be violative of the Constitution of the United States and that of Alabama, it is unnecessary for this Court to pass on the constitutionality of the Federal Act. (Tennessee Publishing Company, Petitioner, vs. American National Bank, decided by the Supreme Court of the United States, November 9th, 1936.) We make no decision and ex-
[fol. 237] press no opinion as to the constitutionality of the Federal Act.

Chamberlin, Inc., vs. Andrews, 271 N. Y. 1, affirmed by an equal division of the Supreme Court of the United States, is of no authority on the federal questions involved. Hertz vs. Woodmen, 218 U. S. 205.

Sam'l H. Sibley, Circuit Judge; Robert T. Ervin, U. S. District Judge; Charles B. Kennamer, U. S. District Judge.

[fol. 238] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA

No. 692. In Equity

GULF STATES PAPER CORPORATION, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, Individually and as Attorney General of the State of Alabama, et al., Defendants

No 691. In Equity

SOUTHERN COAL & COKE COMPANY, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, as Attorney General, et al., Defendants

DECREE—Filed December 15, 1936

This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1936, as amended, and known as the Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing

a bond in the sum of Ten Thousand ($10,000) Dollars, conditioned as by the statute in this regard required.

And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in their individual [fol. 239] and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

This decree signed this December 15, 1936.

Sam'l H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[fols. 240-241] Bond on injunction for $10,000.00, approved and filed Dec. 28, 1936, omitted in printing.

[fol. 242] In United States District Court

[Title omitted]

Stipulation as to Writ of Injunction—Filed January 20, 1937

It is hereby stipulated by and between counsel for Plaintiff and the Defendants in the above styled cause that the Defendants and each of them, by and through their counsel of record, accept service of the writ of injunction as ordered and decreed in the final decree in said cause of date December 15, 1936, and agree in all respects to be bound thereby until the further orders of the Court, and it is agreed that

the issuance and service of any other writ or notice is hereby waived.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Appellants. Borden Burr (Birmingham, Ala-
[fol. 243] bama); Neil P. Sterne (Anniston, Alabama); Marion Rushton (Montgomery, Alabama); Attorneys for Plaintiff. Benners, Burr, McKamy, & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

[File endorsement omitted.]

[fol. 244] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 20, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and feeling themselves aggrieved by the final decree of the Court entered herein, the 15th day of December, 1936, pray an appeal therefrom to the Supreme Court of the United States. The particulars wherein they consider the final decree erroneous are set forth in their assignment of errors on file and to which reference is made.

Wherefore, the premises considered, your petitioners pray that an appeal in their behalf to the Supreme Court of the United States for the correction of the errors complained of and herewith duly assigned, be allowed and

granted; and that an order be had fixing the amount of bond and security to be given by these defendants as Appellants and conditioned as the law directs, and they pray [fol. 245] a reversal of said decree.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[fol. 246] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 20, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and in connection with their petition for appeal file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final decision of the Three-Judge District Court entered the 15th day of December, 1936.

The Three-Judge District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss [fol. 247] the bill of complaint.

4. In perpetually enjoining the defendants from enforceing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions, reports

or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Act.

6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Act.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Act against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compensation Act by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Act.

9. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with Article 1, Section 23 of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Act is a denial to the plaintiff of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

[fols. 248-263] 13. In holding that the classifications of employers contained in the Alabama Unemployment Com-

pensation Act are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 264] In United States District Court for the Middle District of Alabama

No. 691. In Equity

Southern Coal & Coke Company, a Corporation, Plaintiff-Appellee,

vs.

Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, and J. L. Kaufman, Individually and as Chairman and a Member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, Each Individually, and as Members of Said Unemployment Compensation Commission, and Bibb Graves, Individually and as Governor of the State of Alabama, Defendants-Appellants

Before the Honorables Samuel H. Sibley, Circuit Judge, and Robert T. Ervin and Chas. B. Kennamer, District Judges, Composing the Court Consisting of Three Judges under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266, as Amended)

ORDER ALLOWING APPEAL—Filed January 20, 1937

It appearing to the Court in the cause stated that the Defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, have filed their petition for appeal to the Supreme Court of the United States, and have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question,

It is hereby Ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the decree rendered in said cause on the 15th day of December, 1936, and that said Defendants give a bond with good and sufficient [fols. 265-267] security in the sum of $1,000.00 Dollars ($1,000.00) that they as Appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated this 20th day of January, 1937.

Samuel H. Sibley, Circuit Judge; Robert T. Ervin, District Judge; Charles B. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 268-270] Bond on appeal for $1,000.00, approved and filed Jan. 21, 1937, omitted in printing.

[fols. 271-272] Citation in usual form, showing service on Borden Burr et al., filed Jan. 20, 1937, omitted in printing.

[fol. 273] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed January 20, 1937

The plaintiff in the above entitled case is hereby notified that the defendants appealed from the decree of the Court as rendered on the 15th day of December 1936, and that said appeal will be to the Supreme Court of the United States in accordance with the citation as issued in this case.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[fol. 274] Service of the above notice of appeal accepted, this the 12th day of January, 1937.

Borden Burr, Birmingham, Alabama; Neil P. Sterne, Anniston, Alabama; Marion Rushton, Montgomery, Alabama, Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

[File endorsement omitted.]

[fol. 274-a] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 20, 1937

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which has been allowed herein to the Supreme Court of the United States, the clerk is requested to prepare and forward to the clerk of the Supreme Court of the United States a transcript of the record on appeal which shall include only the following portions of the record:

1. The last amended bill of complaint (the original bill of complaint being omitted) and application for interlocutory and final injunction filed herein on the 27th day of October, 1936.

2. The order granting a restraining order and setting the application for an interlocutory injunction down for hearing before the Hon. Samuel H. Sibley, Circuit Judge, the Honorable Robert T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge, filed herein October 9, 1936.

3. Order setting the hearing of plaintiffs' application for an interlocutory injunction down for hearing on November 18, 1936, before the Hon. Samuel H. Sibley, Circuit Judge, the Honorable R. T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge, continuing the temporary restraining order until that date and ordering service of notice that and prior orders upon the Honorable Bibb Graves, Governor of Alabama, together with return [fol. 274-b] of service thereof on the Honorable Bibb Graves, Governor of Alabama, endorsed thereon as filed herein on the 29th day of October, 1936.

4. The defendant's motion to dismiss the plaintiff's bill of complaint as amended, filed herein on the 7th day of November, 1936.

5. The answer of the defendants filed herein on the 10th day of November, 1936, and affidavit verifying it filed November 18, 1936.

6. The stipulation and agreement between the plaintiff and the defendants that without waiving the plaintiff's insistence on its application for the interlocutory injunction, this cause might also be submitted for final decree on the same pleadings and proof, the same being filed herein on the 18th day of November, 1936.

7. The order of the Court entered the 18th day of November, 1936, granting the plaintiff a temporary injunction upon the same terms and conditions as imposed by the temporary restraining order theretofore entered by the Honorable C. B. Kennamer, District Judge, on the 9th day of October, 1936, except as therein modified, to be effective until the date of the final decree herein.

8. The statement of the evidence and the evidence therein referred to under Equity Rule 75 stipulated and agreed to between the plaintiff and defendants and the order approving the same, the same being filed herein on the 20th day of January, 1937.

9. The findings of fact and conclusions of law filed by the court herein on the 15th day of December, 1936.

10. The decree filed by the court herein on the 15th day of December, 1936.

10½. Plaintiff's bond filed December 28, 1936.

11. Stipulation waiving issue, service and return of service of the writ of injunction to the defendants filed herein on the 20th day of January, 1937.

12. The petition for appeal filed herein on the 20th day of January, 1937.

13. The assignment of errors accompanying the petition for appeal filed herein on the 20th day of January, 1937.

14. The statement as to the jurisdiction of the Supreme Court of the United States.

15. The order allowing the appeal and fixing the bond [fol. 275] filed herein on the 20th day of January, 1937.

16. Service of appeal papers and acceptance of service thereof.

17. The appeal bond and the approval of the same filed herein on the 21st day of January, 1937.

18. The citation on appeal and acceptance of service of same filed herein on the 20th day of January, 1937.

18½. Notice of appeal and acceptance filed 1/20/37.

19. This Præcipe and the order approving the same filed herein on the 20th day of January, 1937.

This the 21st day of January, 1937.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton Bibb, Special Assistant of the Attorney General of the

State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants. Inge & Stallworth, Mobile, Alabama, of Counsel for Appellants. Borden Burr (Birmingham, Alabama), Neil P. Sterne (Anniston, Alabama), Marion Rushton (Montgomery, Alabama), Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

[fol. 276] Counsel for appellants, defendants, having submitted the foregoing Præcipe, and the same having been approved and stipulated by counsel for appellee, plaintiff, the said Præcipe is hereby approved and it is ordered that the clerk transmit the original narrative of proceedings herein specified to the clerk of the Supreme Court of the United States for the purposes of the appeal in the said cause.

Ordered, this the 20th day of January, 1937.

Samuel H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 277] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 278] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed February 8, 1937

The appellants intend to rely upon the contentions that the specially constituted District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss the bill of complaint.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions reports or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Law.

[fol. 279] 6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Law.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Law against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compensation Law by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Law.

9. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void because in conflict with Article 1, Section 23, of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Law is a denial to the plaintiff of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Law are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

[fol. 280] 15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

The appellants deem the entire record as filed to be necessary for the consideration of the contentions above enumerated.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building Mobile, Alabama, Attorneys for (Defendants) Appellants. Inge & Stallworth, Mobile, Alabama, of Counsel.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee this 12th day of January, 1937.

Borden Burr, Birmingham Alabama; Neil P. Sterne, Anniston, Alabama; Marion Rushton, Montgomery, Alabama, Attorneys for (Plaintiff) Appellee. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama.

[fol. 281] Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee, this 12th day of January, 1937.

Borden Burr (Birmingham, Alabama); Neil P. Sterne (Anniston, Alabama); Marion Rushton (Montgomery, Alabama). Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for plaintiff.

[fol. 282] [File endorsement omitted.]

Endorsed on cover: File No. 41,264. M. Alabama, D. C. U. S. Term No. 724. Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., Appellants, vs. Southern Coal & Coke Company. Filed February 8, 1937. Term No. 724, O. T., 1936.